



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 635**

**[Docket No. 230419-0106]**

**RIN 0648-BI10**

#### **Atlantic Highly Migratory Species; Spatial Fisheries Management**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments; public hearings.

**SUMMARY:** This proposed rule would implement Draft Amendment 15 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) (Amendment 15). NMFS is proposing changes to Atlantic HMS fishery management measures regarding four commercial longline spatial management areas and the administration and funding of the HMS pelagic longline electronic monitoring (EM) program. Specifically, NMFS proposes to modify the timing and boundaries of the Mid-Atlantic shark, Charleston Bump, East Florida Coast, and DeSoto Canyon closed areas to create low- and/or high-bycatch risk areas. Lastly, NMFS proposes to implement a cost allocation program to transition electronic monitoring sampling costs to the industry, while NMFS remains responsible for administrative costs. These proposed changes would directly impact bottom and pelagic longline fishermen who hold Atlantic HMS fishing permits, and HMS commercial fishermen who use other gear types and HMS recreational fishermen may also be indirectly impacted given the proposed changes to the existing closed areas.

**DATES:** Written comments must be received by September 15, 2023. NMFS will hold five public hearings via conference calls and webinars on Amendment 15 from June 15

through August 22, 2023. For specific dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2019-0035, by electronic submission. Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov/> and enter “NOAA-NMFS-2019-0035” in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may also be submitted via [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

NMFS will hold three in-person public hearings and two virtual public hearings via conference call and webinar on this proposed rule and Draft Amendment 15. NMFS will hold public hearings in Jupiter, FL; Houma, LA; and Manteo, NC. For specific locations, see the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the supporting documents—including Draft Amendment 15, which includes the draft environmental impact statement (DEIS), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA); the Issues and Options for

Research and Data Collection in Closed and Gear Restricted Areas in Support of Spatial Fisheries; the peer-reviewed journal article regarding the predictive modeling program used in support of this rulemaking; and the 2006 Consolidated HMS FMP and amendments are available from the HMS website at

<https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Steve Durkee or Larry Redd, Jr., at the email addresses and telephone number below.

**FOR FURTHER INFORMATION CONTACT:** Steve Durkee

([steve.durkee@noaa.gov](mailto:steve.durkee@noaa.gov)), Larry Redd, Jr. ([larry.redd@noaa.gov](mailto:larry.redd@noaa.gov)), Randy Blankinship ([randy.blankinship@noaa.gov](mailto:randy.blankinship@noaa.gov)), or Karyl Brewster-Geisz ([karyl.brewster-geisz@noaa.gov](mailto:karyl.brewster-geisz@noaa.gov)) at 301-427-8503.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Atlantic HMS fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635. A brief summary of the background of Draft Amendment 15 and this proposed rule is provided below. Additional information regarding spatial management can be found in Draft Amendment 15 itself, the 2006 Consolidated HMS FMP and its amendments, the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at:

<https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

Closed areas are typically discrete geographic areas where certain types of fishing are restricted or prohibited (usually by restricting a particular type of gear) for limited periods of time or the entire year. Closed areas can be particularly effective in reducing or eliminating fishing interactions between particular species and gears. Since 1999, NMFS has implemented a number of time/area closures and gear restricted areas in the Atlantic

Ocean and Gulf of Mexico to reduce discards and bycatch of a number of species. NMFS acknowledges that incidental catch is different than “bycatch,” which has a specific definition under the Magnuson-Stevens Act, *see* 16 U.S.C. 1802(2). However, for ease of communication in this rule, unless otherwise noted, “bycatch species” generally refer to all non-target catch species, including incidentally-caught species that fishermen may or may not retain. Four spatial management areas are being addressed by Draft Amendment 15 and this proposed action: Charleston Bump, DeSoto Canyon, East Florida Coast, and Mid-Atlantic shark closed areas. In 2000, NMFS published a final rule that, in addition to other things, closed the Charleston Bump, DeSoto Canyon, and East Florida Coast areas to pelagic longline gear effective in early 2001 (65 FR 47213, August 1, 2000). The Charleston Bump closed area is a seasonal closure from February through April every year, whereas the DeSoto Canyon and East Florida Coast closed areas are closed year-round to pelagic longline gear. The closures were implemented to reduce bycatch and incidental catch of overfished and protected species by pelagic longline fishermen who target HMS. In 2005, NMFS published a final rule that, in addition to other things, implemented the Mid-Atlantic shark closed area. HMS fishermen are prohibited from using bottom longline gear in the Mid-Atlantic shark closed area from January through July. The intent of this closure was to reduce both the catch and mortality of dusky and juvenile sandbar sharks (68 FR 74746, December 24, 2003). Further information on the four spatial management areas is contained in the above-cited FR documents and Section 4.11 of Draft Amendment 15.

Since implementation of these time/area closures, there has been little to no formal evaluation on whether the closures are still effective in achieving their objectives or whether the balance of associated costs and benefits over time is still appropriate. Given the static nature of the existing time/area management measures, the highly dynamic nature of HMS fisheries, and the highly dynamic nature of the ocean

environment, the need to assess the effectiveness of time/area closures and other gear restricted management measures is heightened. However, while closed areas can be an effective management tool for achieving certain objectives, closed areas can also reduce or eliminate the ability to gather fishery-dependent data within the areas. Fishery-dependent data are information collected during normal fishing operations (*e.g.*, catch composition, bycatch rates, fishing effort), and provide a vital and cost-effective source of information for fisheries management. In general, such data are critical in determining stock status, assessing bycatch levels, and in meeting other fishery management needs. Relevant to this proposed rule, it is important to recognize that in addition to reducing fishery-dependent data, the closed areas have also reduced the ability to collect fishery-independent data from these areas. Fishery-independent data are similar to fishery-dependent data, but the information is collected by scientists and the data collection methods may not be directly comparable to the methods used by fishermen, even if the data are collected on the same gears. The collection of fishery-independent data is more costly than fishery-dependent data and relies on scientists being able to collect the information and obtain the permits needed to fish in the closed areas. Of all four areas, because it is the only area that had research built into its design, only the Mid-Atlantic shark closed area has had consistent data collection and monitoring. In the mid-2000s, there was one research project that collected data in the East Florida Coast closed area from three vessels over three years (73 FR 450, January 3, 2008). In 2017, NMFS approved another research project for that area (82 FR 37566, August 11, 2017), but that research did not occur.

To address the lack of catch information inside of closed areas and provide a means of evaluating the efficacy of the closed areas, NMFS developed a spatial modeling tool, HMS Predictive Spatial Modeling (PRiSM). HMS PRiSM combines observer-collected catch data with environmental variables (*e.g.*, sea surface temperature, salinity,

chlorophyll-A, bathymetry) to create a model that predicts catch of modeled species even in areas where limited or no data has been collected. HMS PRiSM fishery interaction predictions provide important information on where commercial bycatch is likely to occur and helps direct data collection efforts to avoid jeopardizing conservation goals. The model does not use other catch or location data (*e.g.*, tagging data or fishery-independent location data) because the intent is to model when and where the commercial fishery is likely to interact with species, not to model when and where the species can be found generally. Further details on PRiSM and analyses conducted for this action are in Chapter 2 and Appendices 1-6 of Draft Amendment 15.

On May 16, 2019, NMFS published a Notice of Intent in the **Federal Register** that provided formal notice to the public that NMFS intended to prepare an environmental impact analysis; announced the availability of the Issues and Options Paper and the start of the public scoping process (with a comment period of May 16 through July 31, 2019); and solicited public comments (84 FR 22112). On May 22, 2019, NMFS published a notice that provided the dates and locations of five scoping meetings, including a webinar, pertaining to spatial management research (84 FR 23519). Also on May 22, 2019, NMFS conducted scoping during the spring HMS Advisory Panel meeting.

Draft Amendment 15 is a consolidated document that includes a Draft Environmental Impact Statement (DEIS), Initial Regulatory Flexibility Analysis (IRFA), Draft Regulatory Impact Review, and Draft Social Impact Assessment. It contains a complete description and analysis of the range of alternatives analyzed. The preferred alternatives in Draft Amendment 15 are the measures proposed in this rule, described below. A description of the significant alternatives to the proposed measures is provided later in this preamble in the summary of the IRFA.

### **Proposed Measures**

This proposed rule is designed to: (1) use spatial management tools to minimize bycatch and bycatch mortality, to the extent practicable, while also optimizing fishing opportunities for U.S. fishing vessels; (2) develop methods of collecting target and non-target species occurrence and catch rate data from HMS spatial management areas for the purpose of assessing area performance; (3) broaden the considerations for the use of spatial management areas as a fishery management tool, including to provide flexibility to account for the highly variable nature of HMS and their fisheries, manage user conflicts, facilitate collection of information, address the need for regular evaluation and performance review, plan for climate resilience, and address environmental justice; (4) evaluate the effectiveness of existing HMS spatial management areas, and if warranted, modify them to achieve an optimal balance of ecological and socioeconomic benefits and costs; and (5) modify the HMS electronic monitoring program as necessary to augment spatial management and address the requirements of relevant NMFS policies regarding electronic monitoring. In Draft Amendment 15, NMFS considered a reasonable range of different alternatives to meet these objectives and is proposing to implement the preferred alternatives in this proposed rule. NMFS' detailed analysis of the alternatives is provided in Draft Amendment 15 (see **ADDRESSES** for how to get a copy) and a summary is provided in the IRFA below. In developing this proposed rule, NMFS considered comments received at HMS Advisory Panel meetings, other conservation and management measures that have been implemented in HMS fisheries since 2006 that have affected relevant fisheries and bycatch issues, and public comments received during scoping on the Issues and Options paper for this rulemaking (84 FR 22112, May 16, 2019), including comments provided at the May 2019 HMS Advisory Panel meeting. In response to public comment on this proposed rule and Draft Amendment 15, NMFS may make changes in the final rule by modifying the proposed measures or adopting different or additional measures in response to public comment.

For each of the four spatial management areas, Draft Amendment 15/DEIS analyzed a range of alternatives, including no action alternatives, on evaluation and modification of the areas, now referred to as “spatial management areas” (A alternatives); commercial data collection programs for the areas (B alternatives), and evaluation timing of the areas (C alternatives). The A alternatives include different temporal and/or spatial changes for each area and identify high- and low-bycatch-risk areas therein. The B alternatives consider data collection approaches for the high- and low-bycatch-risk areas: establishing a research fishery; cooperative research through exempted fishing permits; and monitoring areas (i.e., low-bycatch-risk areas inside the spatial management areas) with effort caps, bycatch caps, trip-level effort controls, observer coverage, electronic monitoring, and/or data sharing and communication protocols. The C alternatives consider three and five-year review cycles for spatial management areas; review of areas as warranted based on regulatory review factors; and a sunset provision for spatial management areas. On a related note, NMFS proposes in this action to reorganize, clarify and add regulatory provisions regarding modifying or establishing spatial management areas (preferred alternative E2). Separate from the spatial management areas, Draft Amendment 15 also analyzed a range of alternatives related to transfer of sampling costs of the HMS pelagic longline electronic monitoring program from the Agency to industry (F alternatives).

As reflected below, NMFS has described its preferred packages of A, B, and C alternatives for each spatial management area that would allow for the bycatch risk-appropriate collection of data needed to evaluate the performance of spatial management measures in meeting conservation and management goals. The preferred packages are labeled D1, D2, D3, and D4 in Section 5.4 of Draft Amendment 15. While these proposed changes would directly impact bottom and pelagic longline fishermen who hold Atlantic HMS fishing permits, HMS commercial fishermen who use other gear types and



HMS recreational fishermen have expressed concern about potential indirect impacts from changes to the current closed areas as a result of possible changes in fishing effort, strategy or location. Discussion of HMS recreational fisheries is in Section 5.4.6 of Draft Amendment 15.

### **Spatial Management Area Preferred Packages**

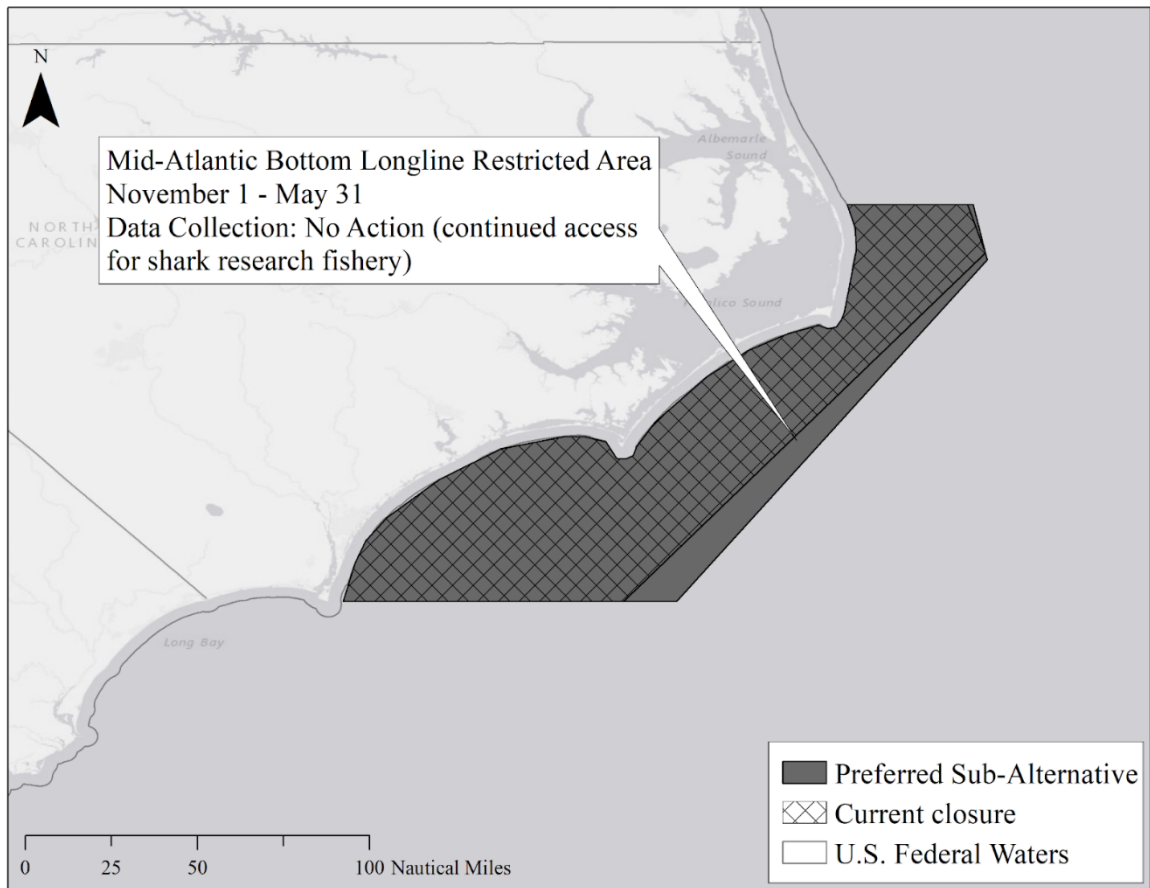
For evaluation timing and review of all four spatial management areas, NMFS' preferred alternatives are C2, C4 and E2. NMFS would evaluate data collected from the spatial management areas once three years of catch and effort data is finalized and available (Alternative C2). In addition, NMFS may review spatial management areas if specific concerns arise, which may include but is not limited to unexpectedly high or low bycatch, high or low data collection efforts, fishing effort that is overly clustered temporally or spatially, changed conditions within the fishery as a whole, or changed status of relevant stocks (Alternative C4). NMFS also prefers Alternative E2, which provides for adding or revising regulations to provide considerations for review, evaluation, and adjustment of spatial management areas. *See **Spatial Management regulatory provisions*** discussion below.

Proposed 50 CFR §§ 635.34(d) and 635.35(e) contain regulatory text related to the preferred C and E alternatives. New text for the preferred A and B alternatives is mainly in proposed §§ 635.35 (spatial management area restrictions), 635.2 (definitions), and 635.69(e)(2)(i) and (5) (additional VMS hailing out declarations and reporting within Monitoring Areas)). Additions of or revisions to terminology (i.e., using “spatial management areas” and “monitoring areas” instead of “closed areas”), reorganization of provisions, and updates to citations and other consistency edits appear in §§ 635.21(c)-(d) (sea turtle measures and possession/landing limits), 635.24 (commercial retention limits), 635.32 (exempted fishing permit (EFP)), and 635.34 (adjustment of management

measures). However, substantive aspects of those provisions remain unchanged from current regulations.

Currently, HMS closed areas, as well as regulations back-stopping NMFS regional closed areas, are in § 635.21. This action would move regulatory text for those areas to proposed § 635.35, update and streamline names and citations for NMFS regional closed areas in § 635.35(d), and delete an outdated provision at current § 635.21(c)(3) (2020-2022 pelagic longline monitoring areas). Text regarding transiting areas, gear stowage, rebuttable presumption, shark research fishery, and Northeast Distant gear restrict area (NED) is the same in proposed § 635.35(a) as in current § 635.21. Proposed § 635.71 contains new prohibitions for spatial management areas as well as consistency edits.

#### *Mid-Atlantic Shark Spatial Management Area*



**Figure 1 -- Preferred Mid-Atlantic Shark Spatial Management Area Package. High-bycatch risk area is shaded. No low-bycatch risk area is defined.**

After considering four alternatives, including the No Action alternative, NMFS proposes implementing the preferred alternative (Alternative A1d) to modify the “Mid-Atlantic shark closed area.” This area, as shown in Figure 1, has been closed to HMS permitted fishermen using bottom longline gear during the months of January through July since 2005. This preferred alternative package would modify the geographic boundary and timing of the current Mid-Atlantic shark closed area, where the use of bottom longline gear is prohibited, unless operating in the shark research fishery. The new Mid-Atlantic Shark spatial management area (*see* proposed § 635.2 and 635.35(a), (b)) would be managed as follows:

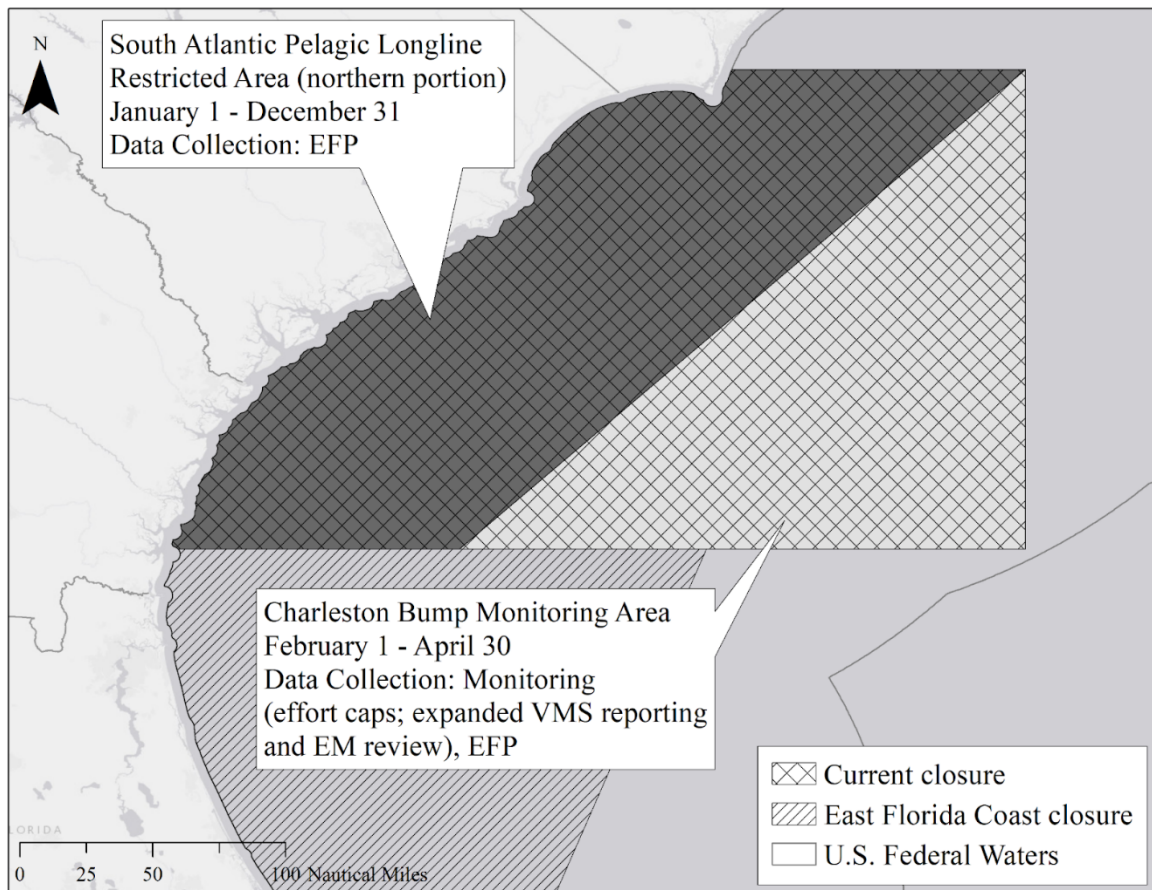
- NMFS would extend the current eastern boundary to the 350-meter shelf break. The area would be designated as a high-bycatch risk area, and no low-bycatch risk area would be defined. The high-bycatch risk area would be designated as the “Mid-Atlantic Bottom Longline Restricted Area.”
- The Mid-Atlantic Bottom Longline Restricted Area would be closed to fishing with bottom longline gear from November 1 to May 31 (proposed § 635.35(b)).
- Data collection would remain the same (Alternative B1, no action) with continued access for fishery-independent surveys and observer data collected from participants in the shark research fishery, who can use bottom longline in the area to target sharks.

Extending the eastern boundary of the current Mid-Atlantic shark closed area to the 350-meter shelf break would provide greater protections to bycatch species (*e.g.*, sandbar, dusky, and scalloped hammerhead sharks) with greater fishery interaction risk along the 350-meter shelf break. Shifting the timing of the closure from January through July to the proposed November through May time period would align with the time period that has the highest likelihood of fishery interactions. Since 2005, the Mid-Atlantic shark closed area has been closed to bottom longline fishing, however, some data are

currently collected in the area as part of the shark research fishery. NMFS established the shark research fishery as part of Amendment 2 to the HMS FMP. Within the Restricted Area, NMFS would continue to allow shark research participants the opportunity to land sandbar, other large coastal sharks, small coastal sharks, smoothhound, and pelagic sharks in the closed area and provide NMFS with valuable data. Participants within the program are subject to 100-percent observer coverage and other terms and conditions as defined in the permit. Data collection from this program has been vital in numerous shark stock assessments and new data collection programs may not be necessary. Furthermore, due to the low level of shark bottom longline effort in the region, creating new data collection programs may not be feasible. Thus, NMFS is not proposing a new data collection program within the revised coordinates of the Mid-Atlantic Bottom Longline Restricted Area.

NMFS would evaluate the area once three years of data is available but may evaluate the area earlier, if preliminary data indicate that there may be potential conservation and management issues, e.g., unexpectedly high or low bycatch, high or low data collection efforts, fishing effort that is overly clustered temporally or spatially, changed conditions within the fishery as a whole, changed status of relevant stocks, etc. *See* proposed § 635.35(e) (considerations for review of spatial management areas). The use of an evaluative process provides NMFS a precautionary mechanism to collect and review data, and determine whether spatial or temporal modifications to the area, or other changes to area management measures, are needed. After reviewing an area, NMFS may make changes or modifications, as appropriate, through framework adjustments (*see* proposed § 635.34).

*Charleston Bump Spatial Management Area*



**Figure 2 -- Preferred Charleston Bump Spatial Management Area Package. High-bycatch risk area is shaded and low-bycatch risk area is in unshaded cross-hatch.**

After considering five alternatives, including the No Action alternative, NMFS proposes implementing the preferred alternative (Alternative A2c) to modify the current Charleston Bump closed area. This area, as shown in Figure 2, has been closed to HMS permitted fishermen using pelagic longline gear during the months of February through April since 2000. The Preferred alternative package would modify the geographic boundary and the duration of the current Charleston Bump closed area, includes two different data collection alternatives, and requires evaluation of the area according to a set schedule. The new Charleston Bump spatial management area (*see* proposed § 635.2 and 635.35(a), (c)(1) and (3)) would be managed as follows:

- NMFS would shift the current eastern boundary to the west. The redefined area would create a boundary that nearly bisects the current Charleston Bump closed area, with a line that runs from the northeastern corner of the current closure, southwest to a point near the Charleston Bump bathymetric feature on the southern boundary. The area inshore of the boundary would be designated as a high-bycatch risk area and offshore of that boundary would be designated as a low-bycatch risk area. The high-bycatch risk area would be combined with the preferred modification alternative for the East Florida Coast closed area to create the “South Atlantic Pelagic Longline Restricted Area.” The low-bycatch risk area in the remaining offshore portion of the closure would be designated as the “Charleston Bump Monitoring Area.”
- The South Atlantic Pelagic Longline Restricted Area (proposed §§ 635.35(c)(1) and 635.2) would be closed to fishermen with HMS permits who are fishing with pelagic longline gear year round unless otherwise allowed per cooperative research via an exempted fishing permit (EFP) (Alternative B4), as described below.

- The Charleston Bump Monitoring Area (proposed §§ 635.35(c)(3) and 635.2) would be open to fishermen with HMS permits who are fishing with pelagic longline gear from February 1 through April 30 but would be subject to an effort cap (Sub-Alternative B3a) that could close the area to fishing through April 30. From May 1 through January 31, the area would be open to normal pelagic longline fishing activities.
- There would be an annual effort cap of 69 pelagic longline sets within the Monitoring Area. The proposed 69 pelagic longline sets effort cap is based on the amount of fishing effort of the larger geographic area called the “reference area” in which the Monitoring Area is located (from 2011 through 2020). *See* Section 3.2.3.1 of Draft Amendment 15 for details on how the cap was calculated. The Atlantic region pelagic longline reference area occurred within the U.S. EEZ from 35° N lat. to 22° N lat. and east of 81° 47’ 24” W long.
- Effort in the Monitoring Area would be closely monitored by NMFS. If the effort cap is reached, or is projected to be reached, NMFS would file a closure for the Monitoring Area with the Office of the Federal Register. From the effective date and time of the closure action, the Monitoring Area would be closed to pelagic longline fishing until May 1. The Monitoring Area would become effective again on February 1. However, NMFS may file for publication with the Office of the Federal Register a closure of the monitoring area before the effort cap is reached and/or an action to not reopen the area on February 1, if warranted by conservation and management concerns raised by unexpectedly high bycatch, high fishing effort, fishing effort that is overly clustered temporally or spatially, or other relevant considerations.

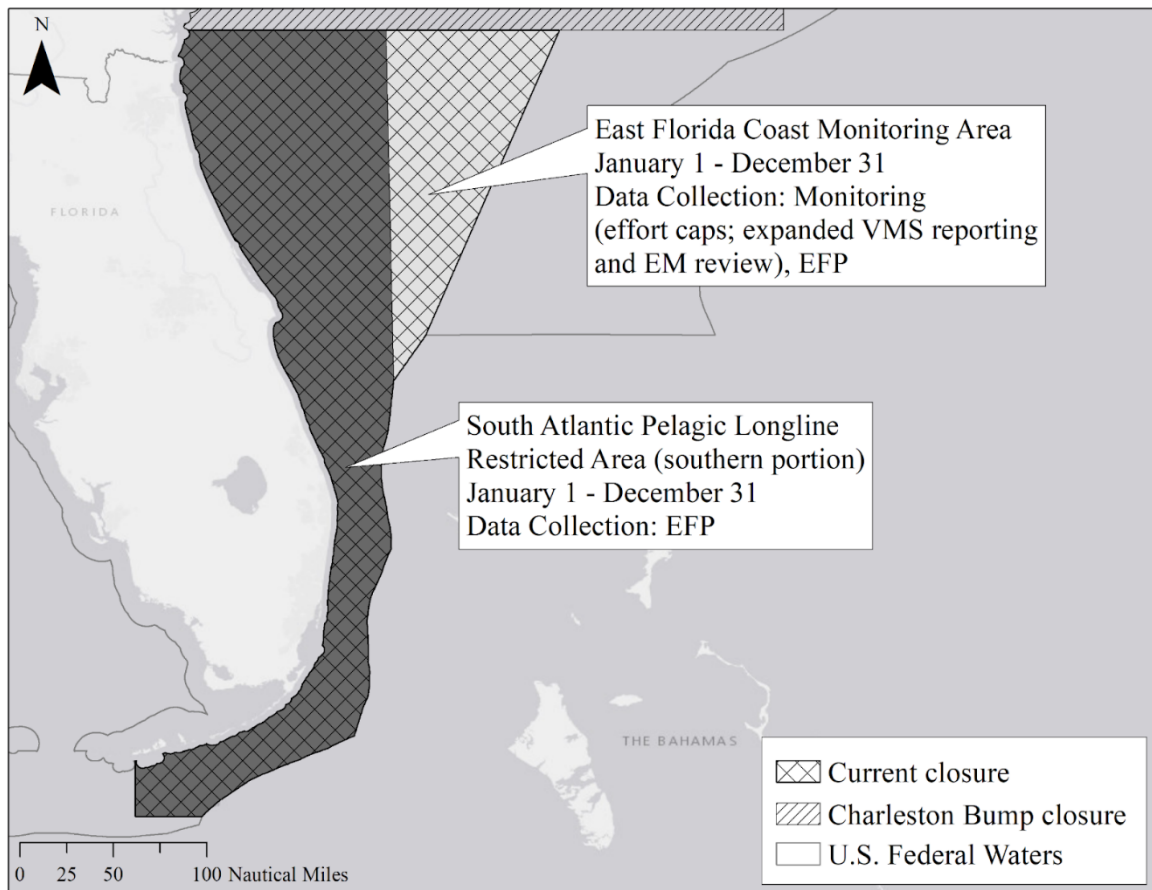


- Within the Monitoring Area (from February through April), pelagic longline vessels fishing for all, or a part of a trip, would have 100 percent of the electronic monitoring data reviewed for that trip, paid for by the vessel owner.
- In order to fish in the Monitoring Area (from February through April), fishermen with HMS permits using pelagic longline gear would be required to comply with three reporting requirements using a vessel monitoring system (VMS). *See* proposed § 635.69(e)(2)(i)-(ii) and (5). First, vessel owners and/or operators that intend to fish in a Monitoring Area would need to declare that intention via VMS during the pre-trip or in-trip hail-out. Second, the vessel owner and/or operator must report fishing effort (date and area of each set and number of hooks) through VMS within 12 hours of the completion of each pelagic longline haul-back. Third, within 12 hours of the completion of each pelagic longline haul-back, the vessel owner and/or operator must report through VMS (or an alternative method specified by NMFS) the length of the following species that are retained and approximate length of these species that are discarded dead or alive: blue marlin, white marlin, roundscale spearfish, sailfish, leatherback sea turtles, loggerhead sea turtles, and shortfin mako sharks. These requirements are in addition to current bluefin tuna reporting requirements. Vessels would be allowed to fish inside and outside of a Monitoring Area on the same trip, but any fishing effort would be considered to have occurred from within the Monitoring Area.
- Researchers could apply for an EFP under § 635.32 to collect data in the Monitoring Area or the Restricted Area, provided their research plan includes standardized conditions that would provide more timely accounting for effort and bycatch and caps at levels designed to prevent adverse ecological impacts. The standardized EFP conditions include additional safeguards such as reporting, observer, and EM requirements.

Establishment of the Charleston Bump Monitoring Area would allow for bycatch risk-appropriate data collection inside the Charleston Bump spatial management area. Data collected during these activities would provide information to evaluate the effectiveness of the area in meeting conservation and management goals. The Monitoring Area also provides increased flexibility for fishermen to adapt to changing distributions and concentrations of HMS and target catch by providing more locations to distribute fishing effort, however, the area would be a special access area, not open to normal commercial pelagic longline fishing, and heavily monitored. This measure also alleviates short-term uncertainty due to lack of data collection from within the boundaries of the Monitoring Area.

NMFS would evaluate the area once three years of data is available but may evaluate the area earlier, if preliminary data indicate that there may be potential conservation and management issues, e.g., unexpectedly high bycatch, fishing effort that is overly clustered temporally or spatially, changed status of relevant stocks, etc. *See* proposed § 635.35(e) (considerations for review of spatial management areas). The use of an evaluative process provides NMFS a precautionary mechanism to collect and review data, and determine whether spatial or temporal modifications to the area, or other changes to area management measures, are needed. After reviewing an area, NMFS may consider changes or modifications to the area or its management measures, as appropriate, through framework adjustments (*see* proposed § 635.34). For example, if bycatch is lower than expected for a period of time, NMFS could consider increasing effort caps for the following year(s).

*East Florida Coast Spatial Management Area*



**Figure 3 -- Preferred East Florida Coast Spatial Management Area Package.**

**High-bycatch risk area is shaded and low-bycatch risk area is in unshaded cross-hatch.**

After considering five alternatives, including the No Action alternative, NMFS proposes implementing the preferred alternative (Alternative A3d) to modify the “East Florida Coast Closed Area.” This area, as shown in Figure 3, has been closed to fishermen using pelagic longline gear year-round since 2000. The preferred alternative package would modify the geographic boundary of the current East Florida Coast Closed Area, includes two different data collection alternatives, and requires evaluation of the area according to a set schedule. The new East Florida Coast spatial management area (*see* proposed § 635.2 and 635.35(a), (c)(1) and (4)) would be managed as follows:

- NMFS would shift the current northeastern boundary to the west to 79° 32’ 46” W long. The area inshore would be designated as a high-bycatch risk area and the offshore area would be designated as a low-bycatch risk area. As noted earlier, the Charleston Bump high-bycatch risk area would be combined with the East Florida Coast high-bycatch risk area to create the South Atlantic Pelagic Longline Restricted Area. The low-bycatch risk area in the offshore portion of the current closure footprint would be designated as the East Florida Coast Monitoring Area.
- As described above, the South Atlantic Pelagic Longline Restricted Area (proposed §§ 635.35(c)(1) and 635.2)) would be closed year round to fishing with pelagic longline gear unless otherwise allowed per cooperative research via an EFP (Alternative B4).
- The East Florida Coast Monitoring Area would be open to fishermen with HMS permits who are fishing with pelagic longline gear year-round, subject to an effort cap (Sub-Alternative B3a) similar to the effort cap in the Charleston Bump Monitoring Area, as described above.
- There would be an annual effort cap of 124 pelagic longline sets within the East Florida Coast Monitoring Area. The proposed 124 pelagic longline sets effort cap is based on the amount of fishing effort of the larger geographic area called the

“reference area” in which the Monitoring Area is located (from 2011 through 2020). *See* Section 3.2.3.1 of Draft Amendment 15 for details on how the cap was calculated. The Atlantic region pelagic longline reference area occurred within the U.S. EEZ from 35° N lat. to 22° N lat. and east of 81° 47' 24" W long.

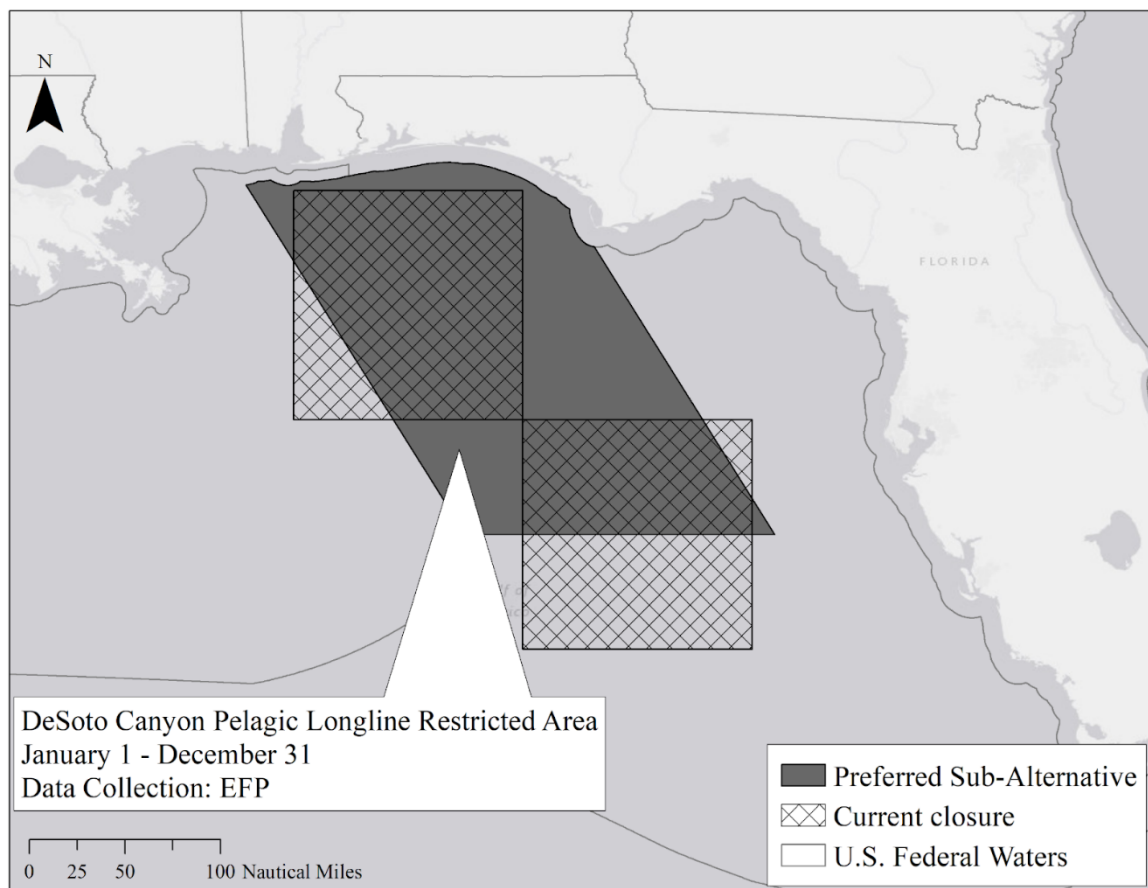
- Effort in the East Florida Coast Monitoring Area would be closely monitored by NMFS. If the effort cap is reached, or is projected to be reached, NMFS would file a closure for the Monitoring Area with the Office of the Federal Register. From the effective date and time of the closure action, the Monitoring Area would be closed to pelagic longline fishing until January 1. However, NMFS may file for publication with the Office of the Federal Register a closure of the monitoring area before the effort cap is reached and/or an action to not reopen the area on January 1, if warranted by conservation and management concerns raised by unexpectedly high bycatch, high data collection efforts, fishing effort that is overly clustered temporally or spatially, or other relevant considerations.
- Within the East Florida Coast Monitoring Area, pelagic longline vessels fishing for all, or a part of a trip, would have 100 percent of the electronic monitoring data reviewed for that trip, paid for by the vessel owner.
- In order to fish in the East Florida Coast Monitoring Area, owners and/or operators of vessels using pelagic longline gear would be required to comply with the same three additional VMS reporting requirements described under Preferred Charleston Bump spatial management area package. *See* proposed § 635.69(e)(2), (5).
- Researchers could apply for an EFP under § 635.32 to collect data in the East Florida Coast Monitoring Area or the Restricted Area, provided their research plan includes standardized conditions that would provide more timely accounting for effort and bycatch and caps at levels designed to prevent adverse ecological

impacts. The standardized EFP conditions include additional safeguards such as reporting, observer, and EM requirements.

Establishment of the Monitoring Area would allow for bycatch risk-appropriate data collection inside the East Florida Coast spatial management area. Data collected during these activities would provide information to evaluate the effectiveness of the area in meeting conservation and management goals. The Monitoring Area also would provide increased flexibility for fishermen to adapt to changing distributions and concentrations of HMS and target catch by providing more locations to distribute fishing effort, however, the area would be a special access area, not open to normal commercial pelagic longline fishing, and heavily monitored. This measure also would alleviate short-term uncertainty due to lack of data collection from within the boundaries of the Monitoring Area.

NMFS would evaluate the area once three years of data is available but may evaluate the area earlier, if preliminary data indicate that there may be potential conservation and management issues, e.g., unexpectedly high bycatch, fishing effort that is overly clustered temporally or spatially, changed status of relevant stocks, etc. *See* proposed § 635.35(e) (considerations for review of spatial management areas). The use of an evaluative process provides NMFS a precautionary mechanism to collect and review data, and determine whether spatial or temporal modifications to the area, or other changes to area management measures, are needed. After reviewing an area, NMFS may consider changes or modifications to the area or its management measures, as appropriate, through framework adjustments (*see* proposed § 635.34). For example, if bycatch is lower than expected for a period of time, NMFS could consider increasing effort caps for the following year(s).





**Figure 4 -- Preferred DeSoto Canyon Spatial Management Area Package. High-bycatch risk area is shaded and low-bycatch risk area is in unshaded cross-hatch**



After considering four alternatives, including the No Action alternative, NMFS proposes implementing the preferred alternative (Alternative A4d) to modify the “DeSoto Canyon Closed Area.” This area, as shown in Figure 4, has been closed to fishermen using pelagic longline gear year-round since 2000. The preferred alternative package would modify the geographic boundary of the current DeSoto Canyon Closed Area, include a method of data collection for the high-bycatch risk area, and require evaluation of the area according to a set schedule. The low-bycatch risk area (unshaded, cross-hatched area in Figure 4) would be open to normal pelagic longline fishing activities. The new DeSoto Canyon spatial management area (*see* proposed § 635.2 and 635.35(a), (c)(1)) would be managed as follows:

- NMFS would shift the spatial extent and shape, creating a parallelogram designated as a high-bycatch risk area. The high-bycatch risk area would be designated as the “DeSoto Canyon Pelagic Longline Restricted Area.” The parallelogram would connect the southern points; 27° 00’ N lat., 86° 30’ W long. and 27° 00’ N lat., 83° 48’ W long., while the northern boundary would be defined by the state water boundary between 88° 24’ 58” W long. and 85° 22’ 34” W long.
- The DeSoto Canyon Pelagic Longline Restricted Area would be closed year round to fishing with pelagic longline gear unless otherwise approved via an EFP. Researchers could apply for an EFP under § 635.32 to collect data in the DeSoto Canyon Pelagic Longline Restricted Area, provided their research plan includes standardized conditions that would provide more timely accounting for effort and bycatch and caps at levels designed to prevent adverse ecological impacts. The standardized EFP conditions include additional safeguards such as reporting, observer, and EM requirements.

In the redesigned high-bycatch risk area, NMFS proposes collecting data through the issuance of exempted fishing permits to researchers with research plans that include the standardized conditions discussed above. NMFS is not proposing a new data collection program in the low-bycatch risk areas because the modified shape of the spatial management area created multiple, non-contiguous areas and a data collection program in those areas would be overly complex to administer and enforce. As described under the other alternatives above, NMFS would evaluate the De Soto Canyon Restricted Area once three years of data is available (or earlier, if needed), and after a review, may consider changes or modifications to the area or its management measures, as appropriate, through framework adjustments (*see* proposed § 635.34).

### **Spatial Management Regulatory Provisions**

After considering two alternatives, including the No Action alternative (Alternative E1), NMFS is proposing the preferred alternative (Alternative E2) with regard to spatial management area regulatory provisions. See Section 5.6 of Draft Amendment 15. Under this alternative, NMFS would add to proposed § 635.35(c) considerations for review of spatial management areas, such as fishery metrics, social and economic data, biological information, and oceanographic data. This action is necessary to ensure that future and existing spatial management areas are designed to include the data collection requirements that will show whether the areas meet the intent for which they were created. The need to assess the effectiveness of spatial management measures is critical due to the static nature of the spatial management measures, the highly dynamic nature of HMS fisheries, and the highly dynamic nature of the ocean environment. As explained earlier, after reviewing an area, NMFS may consider changes or modifications to the area or its management measures, as appropriate, through framework adjustments (*see* proposed § 635.34).

### **HMS Pelagic Longline Electronic Monitoring Cost Allocation**

After considering three alternatives, including the No Action alternative (F1) and removal of current EM regulations regarding bluefin tuna and shortfin mako sharks (F3), NMFS is proposing the preferred alternative (Alternative F2) with regard to electronic monitoring costs. Detailed information regarding the electronic monitoring alternatives and preferred Alternative F2 measures can be found in Section 5.6 of Draft Amendment 15. Under preferred Alternative F2, NMFS would transfer 100 percent of electronic monitoring sampling costs to the industry, over a 3-year period (phased-in). *See* proposed § 635.9(b). NMFS would certify electronic monitoring vendors based on their ability to carry out responsibilities and duties under § 635.9(d) and through the application process in § 635.9(c). Vessel owners could then contract directly with any NMFS-certified vendor for electronic monitoring services. Unless otherwise specified, owners and operators would be jointly and severally responsible for their vessel's compliance with EM requirements (*see* proposed § 635.9(a)). To have a standardized electronic monitoring program that can be implemented by vendors, the program has four distinct components: (1) vendor requirements (§ 635.9(d) with application, approval and removal processes in paragraph (c)); (2) vessel owner and operator requirements (§ 635.9(a), (e)); (3) vessel monitoring plan (§ 635.9(d)(2)); and (4) modification of the current IBQ Program's electronic monitoring spatial/temporal requirements (§ 635.9(a) (EM Data Review Areas)).

The proposed rule clarifies responsibilities of EM service providers and vessel owners and operators, but many requirements of the current electronic monitoring regulations are not substantively changed. Required content for vessel monitoring plans in proposed rule § 635.9(d)(1) is from current § 635.9(e). EM system components in proposed § 635.9(f) are from current § 635.9(c). Vessel owner and operator requirements in proposed § 635.9(e) are from current § 635.9(b)(2) and (e). Data maintenance, storage and viewing text in proposed § 635.9(g) is from current § 635.9(d)). When drafting new

regulatory text on cost responsibilities and EM vendors (§ 635.9(b)-(d)), NMFS took into consideration existing regulations at 50 C.F.R. 648.11 (Northeast Fisheries Monitoring Coverage) and 50 C.F.R. 660.603-660.604 (West Coast Groundfish EM Program).

*Vendor requirements* (§ 635.9(c)-(d))

NMFS would solicit vendors to perform the operational tasks (*e.g.*, install and maintain electronic monitoring equipment; review electronic monitoring video data, etc.), consistent with vendor technical performance standards (*See* proposed § 635.9(d)).

NMFS, or a NMFS-designated entity, would certify vendors that meet certain requirements, including meeting the technical performance standards, and publish a list of certified vendors in the **Federal Register**, which would be made available to vessel owners. NMFS would reserve the right to remove vendors from the approved list if vendor technical performance standards are not being met or if the vendor is shown to have a conflict of interest. *See* proposed § 635.9(c)(4).

*Vessel Requirements* (§ 635.9(e))

The vessel owner and/or operator subject to the relevant electronic monitoring regulations would need to comply with the operational, cost responsibility, reporting, and communication protocols in the approved Vessel Monitoring Plan (VMP) (see below for more detail on the VMP). Non-compliance with these requirements could result in enforcement action.

*Vessel Monitoring Plans* (§ 635.9(d))

The vessel owner must develop a VMP with assistance from the EM vendor. Final approval of the VMP would be provided by NMFS or a NMFS-designated entity. The VMP must be consistent with relevant VMP regulations. This proposed rule does not consider any changes to the required information in the VMP. However, if a vessel owner

changes vendor, the owner would be required to update the VMP with the new vendor before leaving on a trip.

*Modification of EM IBQ Spatial/Temporal Requirements (§ 635.9(a))*

This proposed rule would change the location and timing of HMS pelagic longline electronic monitoring requirements. Currently, vessels must comply with electronic monitoring requirements regardless of time or location of fishing. This proposed rule would limit the electronic monitoring requirements to certain areas and times. For all areas outside of the spatial management areas discussed earlier, NMFS has identified areas where electronic monitoring data would be most useful to meet bluefin tuna catch reporting compliance goals and designated these spatial/temporal areas as four large “EM Data Review Areas.” In addition to requirements for monitoring areas as described above, vessels would be required to activate EM and submit video only when fishing with pelagic longline in an EM Data Review Area during all or a portion of a trip. Trips that engage in fishing in multiple areas must abide by the more restrictive requirement (*e.g.*, if any fishing occurs in an area that requires electronic monitoring, the entire trip must use electronic monitoring and all videos must be submitted even when fishing in areas that do not require electronic monitoring).

The current EM regulations require vessels fishing with pelagic longline gear on board to have an operational EM system powered on during the full duration of all trips, to record video of all haul-backs, and to send in the hard drive (with the recorded video and metadata) to a NMFS-contracted vendor. At the end of each sampling time period, the SEFSC selects sets for video review under a stratified sampling plan. The first step in selecting sets for review is to filter sets that occurred in a time and area where bluefin tuna interactions are likely. Sets that occur in areas of unlikely bluefin tuna interactions are not considered when selecting sets for review under the stratified sampling plan.

From the narrowed list of sets that occurred in areas and times of likely bluefin tuna catch, the SEFSC selects sets for review and notifies the NMFS-contracted vendor to review the associated videos. The stratified sampling plan cannot be carried out until after all the pelagic longline sets have been deployed and reported. Under Alternative F2, this process would not be operationally feasible, given that vessel owners would directly contract with EM vendors and there may be several approved vendors providing services. Neither the vendor nor the vessel owner would know which sets would ultimately require video review, thus, would be unable to negotiate a price for video review at the time of video submission. Furthermore, video review may be unequally distributed among the multiple vendors, with some vendors receiving more video review requests than expected and some less. This unpredictability could result in higher prices to cover the possibility of higher video costs or could disincentive vendors from entering the HMS EM pelagic longline market. Modification of the EM spatial and temporal requirements could address these problems by limiting video submission to times and areas of likely bluefin tuna catch, allowing vendors to simply review 10 percent of the submitted sets. This would reduce uncertainty for the vendor and simplify the process for selecting sets for video review. Modification of the EM spatial and temporal requirements are designed around the current SEFSC sampling program, would reduce complexity in the selection of pelagic longline sets for review, and should reduce the costs associated with the EM requirements and with the IBQ Program, while maintaining the effectiveness of the EM Program. The objectives of the EM Program in support of the IBQ Program would remain the same (i.e., to verify the accuracy of counts and identification of bluefin tuna reported by the vessel). NMFS also considered ease of communication, compliance, and enforcement when developing the EM Data Review Areas, and does not believe that the areas pose concerns in these regards. Because these EM Data Review Areas are largely designed around the current electronic monitoring video review sampling plan, no impact

to monitoring compliance with the IBQ program is expected. For further details and explanation of EM Data Review Areas, see Section 3.6.2.4 of Draft Amendment 15.

### *Request for Comments*

NMFS is requesting comments on the alternatives and analyses described in this proposed rule, Draft Amendment 15, and the IRFA. Written comments may be submitted via [www.regulations.gov](http://www.regulations.gov) or at a public conference call/webinar. NMFS solicits comments on this action by September 15, 2023 (see **DATES** and **ADDRESSES**).

During the comment period, NMFS will hold three public hearings and two public hearings via conference call and webinar for this proposed action. The hearing locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Steve Durkee or Larry Redd, Jr. at 301-427-8503, at least 7 days prior to the meeting. Information on the webinar will be posted at: <https://www.fisheries.noaa.gov/action/amendment-15-2006-consolidated-hms-fishery-management-plan-spatial-management-EM>.

**Table 1. Dates, times, and locations of upcoming public hearings and conference call.**

<b>Venue</b>	<b>Date/time</b>	<b>Street Address / Webinar Information</b>
Conference call / Webinar	June 15, 2023 2 p.m. to 4 p.m.	<a href="https://www.fisheries.noaa.gov/action/amendment-15-2006-consolidated-hms-fishery-management-plan-spatial-management-EM">https://www.fisheries.noaa.gov/action/amendment-15-2006-consolidated-hms-fishery-management-plan-spatial-management-EM</a>
Public Hearing	July 20, 2023 5 p.m. to 8 p.m.	River Center 805 US Highway 1 Jupiter, FL 33477
Public Hearing	July 25, 2023 5 p.m. to 8 p.m.	Terrebonne Parish Library (Main Branch) 151 Library Drive Houma, LA 70360
Conference call / Webinar	August 17, 2023 2 p.m. to 4 p.m.	<a href="https://www.fisheries.noaa.gov/action/amendment-15-2006-consolidated-hms-fishery-management-plan-spatial-management-EM">https://www.fisheries.noaa.gov/action/amendment-15-2006-consolidated-hms-fishery-management-plan-spatial-management-EM</a>
Public Hearing	August 22, 2023 5 p.m. to 8 p.m.	Dare County Administration Building Commissioners Meeting Room 954 Marshall Collins Drive Manteo, NC 27954

The public is reminded that NMFS expects participants at public conference calls and webinars to conduct themselves appropriately. At the beginning of each public conference call and webinar, the moderator will explain how the public conference call and webinar will be conducted and how and when participants can provide comments. NMFS representative(s) will structure the public conference calls and webinars so that all members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Participants are expected to respect the ground rules, and those that do not may be asked to leave the public conference call and webinars.

### **Classification**

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the National Environmental Policy Act (NEPA), NMFS prepared a DEIS for Draft Amendment 15 and this proposed rule that analyzes impacts on the environment from the preferred alternatives and other alternatives analyzed. The DEIS is consolidated in the same document as Draft Amendment 15. A copy of the Draft Amendment/DEIS is available from NMFS (see **ADDRESSES**). A Notice of Availability of the DEIS is publishing in the **Federal Register** on the same day as this proposed rule. A summary of the impacts of the alternatives considered is described below.

### *Regulatory Flexibility Act*

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic



impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Section 603(b)(1) requires Agencies to describe the reasons why the action is being considered. NMFS is amending the 2006 Consolidated Atlantic HMS FMP to address the modification, data collection, and assessment of four commercial longline spatial management areas; and modification to the administration and funding of the HMS pelagic longline EM program.

Section 603(b)(2) of the RFA requires Agencies to state the objective of, and legal basis for the proposed action. This action is necessary to meet domestic management objectives of the Magnuson-Stevens Act including preventing overfishing, achieving optimal yield, and minimizing bycatch to the extent practicable, as well as the objectives of the ATCA and obligations pursuant to binding recommendations of ICCAT. The objectives of this Amendment are (1) Using spatial management tools, minimize bycatch and bycatch mortality, to the extent practicable, while also optimizing fishing opportunities for U.S. fishing vessels; (2) Develop methods of collecting target and non-target species occurrence and catch rate data from HMS spatial management areas for the purpose of assessing spatial management area performance; (3) Broaden the considerations for the use of spatial management areas as a fishery management tool, including to provide flexibility to account for the highly variable nature of HMS and their fisheries, manage user conflicts, facilitate collection of information, address the need for regular evaluation and performance review, plan for climate resilience, and address environmental justice; (4) Evaluate the effectiveness of existing HMS spatial management areas, and if warranted, modify them to achieve an optimal balance of ecological, social, and economic benefits and costs; and (5) Modify the HMS electronic monitoring program as necessary to augment spatial management and address the

requirements of relevant NMFS policies regarding electronic monitoring, including the 2019 Cost Allocation Policy.

NMFS developed the draft management objectives based upon comments received during the Amendment 15 scoping process and the detailed suggestions and concerns expressed by the HMS Advisory Panel, fishery participants, and the public regarding management of spatial management areas over the last several years. Additionally, the EM funding alternatives were developed to comply with the 2019 NMFS Policy 04-115-02 “Cost Allocation in Electronic Monitoring Programs for Federally Managed Fisheries.” These specific objectives are within the context of the current 2006 Consolidated HMS FMP and its amendments, including the overarching objectives of ending overfishing, and meeting other legal obligations and conservation and management goals and requirements.

Section 603(b)(3) of the Regulatory Flexibility Act requires Agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) authorizes an agency to develop its own industry-specific size standards after consultation with the SBA Office of Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Pursuant to this process, NMFS issued a final rule that established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA compliance purposes (80 FR 81194; December 29, 2015; effective on July 1, 2016). SBA has established size standards for all other major industry sectors in the U.S., including the scenic and sightseeing transportation (water) sector (North American Industry Classification System (NAICS) code 487210, for-hire), which includes charter/party boat entities. SBA has defined a small charter/party boat entity as one with average annual receipts (revenue) of less than \$14.0 million.

NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing. Regarding those entities that would be directly affected by the proposed measures, the average annual revenue per active pelagic longline vessel is estimated to be \$222,000, based on approximately 82 active vessels that produced an estimated \$18.2 million in revenue in 2020, well below the NMFS small business size standard for commercial fishing businesses of \$11 million. No single pelagic longline vessel has exceeded \$11 million in revenue in recent years. HMS bottom longline commercial fishing vessels typically earn less revenue than pelagic longline vessels and, thus, would also be considered small entities.

NMFS has determined that the preferred alternatives would not likely directly affect any small organizations or small government jurisdictions defined under RFA, nor would there be disproportionate economic impacts between large and small entities.

Section 603(b)(4) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. Some preferred alternatives in Draft Amendment 15 would result in reporting, record-keeping, and compliance requirements that require a new or modified Paperwork Reduction Act filing. Under Preferred Alternative Packages D2 and D3, NMFS would implement Alternative B3 to create two monitoring areas within the current footprints of the Charleston Bump and East Florida Coast closed areas. To control effort and ensure accurate reporting under Alternative B3, NMFS prefers implementation of Sub-Alternative B3a (effort caps) and Sub-Alternative B3e (expanded EM review). Sub-Alternative B3a includes two expanded reporting requirements for HMS pelagic longline fishermen operating in the monitoring areas. First, vessel operators that intend to fish in a monitoring area would need to declare that intention via VMS before embarking on a trip or during the in-trip hail-out. Second, vessel operators would be required to report the catch of the following species, in

addition to current bluefin tuna reporting requirements, through VMS within 12 hours after the end of a longline set: blue marlin, white marlin, roundscale spearfish, sailfish, leatherback sea turtles, loggerhead sea turtles, and shortfin mako sharks. Neither requirement is wholly new since pelagic longline vessel operators currently need to hail-out via VMS before embarking on a trip and bluefin tuna catch must be reported with 12 hours after the end of a longline set. Rather, the proposed measures are expanded requirements with an additional hail-out declaration requirement and species reporting requirements. These requirements would impact a sub-set of the 82 active HMS pelagic longline vessels that choose to fish within the monitoring areas.

Under Preferred Alternative F2, HMS pelagic longline vessel owners would be required to cover sampling costs associated with the EM program to support compliance with catch reporting requirements during pelagic longline fishing activity, including incidentally caught bluefin tuna. The alternative would also open up the HMS pelagic longline EM program to additional vendors, and establishes application and reporting standards for potential EM vendors. All pelagic longline vessel owners (82 active vessels) would need to coordinate with a NMFS-approved vendor to provide support for EM requirements including equipment maintenance and replacement and review of video data. NMFS would solicit vendors to perform the tasks in support of the EM program, consistent with performance design standards. NMFS, or a NMFS-designated entity, would certify vendors that meet certain requirements, including meeting the technical performance standards and publish a list of certified vendors in the Federal Register, which would be made available to vessel operators. Certification of EM vendors would require submittal of information by vendors including demonstration of technical ability, a data integrity and storage plan, and conflict of interest information. NMFS anticipates receiving applications from up to four vendors and approval of three.

The expanded requirements under both these alternatives are within the scope of an existing approved Paperwork Reduction Act (OMB Control No. 0648-0372 “Electronic Monitoring Systems for Atlantic Highly Migratory Species”). However, due to the existence of concurrent actions for that collection, which will come up for renewal before the final rule for this action is anticipated to be published, the collection-of-information requirements in this proposed rule will be assigned a temporary Control Number that will later be merged into Control Number 0648-0372. A revised Paperwork Reduction Act submission and approval is pending.

Under section 603(b)(5) of the RFA, Agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed action. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other fishery management measures. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed action has been determined not to duplicate, overlap, or conflict with any Federal rules.

One of the requirements of an IRFA is to describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it. All of the businesses impacted by this action are considered small entities, and thus the requirements are already designed for small entities. Moreover, the objectives for this action center around the modification, data collection, and assessment of spatial management areas and funding and administration of the HMS pelagic longline EM program. NMFS thus

analyzed a broad range of alternatives to meet those objectives: Alternatives A-E consider modification, data collection, and assessment of spatial management areas and the F Alternatives consider funding and administration of the HMS pelagic longline EM program. Consistent application of management measures is important for effective management of spatial management areas and the EM program. Thus, no differing requirements or exemptions would be appropriate. NMFS designed alternatives that would simplify compliance or reporting requirements while still meeting the objectives of the amendment. Preferred A Alternatives to modify spatial management areas used design elements that would ease communication and enforcement including straight lines and points near ports or existing spatial management areas. Preferred B Alternatives to create data collection programs largely built upon current reporting and other requirements to avoid creating overly-complicated measures. Preferred Alternative F2 does introduce new complexities into the HMS pelagic longline EM program, including new requirements to independently contract with EM vendors. However, these complexities may be necessary in order to mitigate adverse economic impacts. Performance standards are built into the preferred B Alternatives to collect data through monitoring areas and cooperative EFP research. Each of these components include a total cap on effort to ensure conservation goals are met. Once effort caps are reached, the area is closed to data collection.

### **Evaluation and modification of closed areas**

#### *Mid-Atlantic Shark Spatial Management Area*

Sub-Alternative A1a, the no action sub-alternative, would maintain the current Mid-Atlantic shark closed area in effect with respect to its spatial and temporal extent. This sub-alternative would likely maintain the recent catch levels and revenues, because the spatial and the temporal extents would remain unchanged and social and economic impacts are expected to be neutral. Median earnings across the shark research fishery and

non-shark research fishery per trip (taking into account operating costs) ranged between \$609 and \$1,192 from 2017 through 2020 in nominal dollars (\$614 in 2020). Estimated total ex-vessel revenue from sharks in 2020 is \$2,311,319 (2021 real dollars). Based on permit and target species, some fishermen direct effort on sharks while others only retain incidentally caught sharks. In 2020, there were 13 active vessels (vessels that had trips where 75 percent of the landings by weight were sharks) targeting sharks in the Atlantic.

Sub-Alternative A1b would maintain the current Mid-Atlantic shark closed area in effect with respect to its spatial extent, and shift the temporal extent to November 1 through May 31 from January 1 through July 31 (i.e., same seven-month duration, but shifted two months earlier). The social and economic impacts of Sub-Alternative A1b are expected to be neutral. There is relatively little bottom longline fishing effort in the Mid-Atlantic region during open time periods, including and adjacent to the area defined by this spatial management area. Effort is low enough that totals for the area, even during open time periods, that the data cannot be provided due to confidentiality concerns. This sub-alternative would maintain the recent catch levels and revenues, and there would likely be low levels of data collection from within the spatial management area. Overall revenues from shark research fishery trips are likely to continue in the range noted in Sub-Alternative A1a. Based on permit and target species, some fishermen direct effort on sharks while others only retain incidentally caught sharks. In 2020, there were 13 active vessels (vessels that had trips where 75 percent of the landings by weight were sharks) targeting sharks in the Atlantic.

Sub-Alternative A1c would modify both the spatial and temporal extent of the current Mid-Atlantic shark closed area. Specifically, this sub-alternative would extend the eastern boundary of the current Mid-Atlantic shark closed area eastward to the 350-m shelf break and shift the north boundary south to Cape Hatteras (35° 13' 12" N lat.). The temporal extent would shift to November 1 through May 31 from January 1 through July

31. The social and economic impacts of Sub-Alternative A1c are expected to be neutral. There is relatively little bottom longline fishing effort in the Mid-Atlantic region during open time periods, including and adjacent to the area defined by this spatial management area. Effort is low enough that totals for the area, even during open time periods, that the data cannot be provided due to confidentiality concerns. This sub-alternative would maintain the recent catch levels and revenues, and there would likely be low levels of data collection from within the spatial management area. Overall revenues from shark research fishery trips are likely to continue in the range noted in Sub-Alternative A1a. Based on permit and target species, some fishermen direct effort on sharks while others only retain incidentally caught sharks. In 2020, there were 13 active vessels (vessels that had trips where 75 percent of the landings by weight were sharks) targeting sharks in the Atlantic.

Sub-Alternative A1d would modify both the spatial and temporal extent of the current Mid-Atlantic shark closed area. Specifically, this sub-alternative would extend the eastern boundary of the current Mid-Atlantic shark closed area eastward to the 350-m shelf break. The temporal extent would shift to November 1 through May 31 from January 1 through July 31. The social and economic impacts of Sub-Alternative A1d are expected to be neutral. There is relatively little bottom longline fishing effort in the Mid-Atlantic region during open time periods, including and adjacent to the area defined by this spatial management area. Effort is low enough that totals for the area, even during open time periods, that the data cannot be provided due to confidentiality concerns. This sub-alternative would maintain the recent catch levels and revenues, and there would likely be low levels of data collection from within the spatial management area. Overall revenues from shark research fishery trips are likely to continue in the range noted in Sub-Alternative A1a. Based on permit and target species, some fishermen direct effort on sharks while others only retain incidentally caught sharks. In 2020, there were 13 active



vessels (vessels that had trips where 75 percent of the landings by weight were sharks) targeting sharks in the Atlantic.

#### *Charleston Bump Spatial Management Area*

Sub-Alternative A2a, the no action sub-alternative, would maintain the current Charleston Bump closed area in effect with respect to its spatial and temporal extent. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. The estimated combined target species revenue is \$4,419,261 (2021 real dollars). This sub-alternative would maintain the recent fishing effort, catch levels, and revenues, resulting in direct neutral social and economic impacts on pelagic longline fishermen. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Sub-Alternative A2b would maintain the current Charleston Bump closed area in effect with respect to its spatial extent, and would shift the temporal scope from December 1 through March 31 from February 1 through April 30 (i.e., starting two months earlier and ending one months earlier; change from a three-month closure to a four-month closure). NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. This sub-alternative would generate less revenue from swordfish and bigeye tuna, but more from yellowfin tuna than the No Action sub-alternative. When combined, the total revenue difference between this sub-alternative and the No Action sub-alternative is -\$205,237. However, fishermen are unlikely to fish in areas with lower catch rates, so reductions in revenue may not be realized. Sub-Alternative A2b would likely result in minor adverse social and economic impacts. From 2018 through 2020, there were 82 active pelagic longline vessels in the

fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

Sub-Alternative A2c would modify both the spatial and temporal extent of the current Charleston Bump closed area. This sub-alternative would move the eastern boundary of the current Charleston Bump closed area westward. Specifically, the eastern boundary of this sub-alternative would be formed by the line connecting the northeast corner of the current Charleston Bump closed area (34° 00' N lat., 76° 00' W long.) to a point on the current southern border of Charleston Bump closed area (31° 00' N lat., 79° 32' 46" W long.). The western boundary of this management area would remain the same as the current western boundary of Charleston Bump closed area. The temporal extent of the high-bycatch-risk area would increase from February 1 to April 30 to include the entire year. The remainder of the current closed area footprint would only be designated low-bycatch-risk area from February 1 through April 30. Outside those months, that area would be open to normal pelagic longline fishing. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. This sub-alternative would generate more revenue from swordfish, but less from yellowfin and bigeye tuna relative to the No Action sub-alternative. When combined the total revenue difference between this sub-alternative and the No Action sub-alternative is \$235,863 resulting in moderate positive direct economic impacts in the short- and long-term, which would also lead to positive direct social impacts. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

Sub-Alternative A2d would modify both the spatial and temporal extent of the current Charleston Bump closed area. Specifically, this sub-alternative would shift the eastern boundary westward 40 nm from the coastline; retain the current northern and

southern boundaries of the current Charleston Bump closed area; and retain the current western boundary of Charleston Bump closed area. The temporal extent of the high-bycatch-risk area would be extended from February 1 through April 30 to October 1 through May 31. The remainder of the current closed area footprint would only be designated low-bycatch-risk area from February 1 through April 30. Outside those months, that area would be open to normal pelagic longline fishing. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. This sub-alternative would generate more revenue from swordfish, but less from yellowfin and bigeye tuna relative to the No Action sub-alternative. When combined, the total revenue difference between this sub-alternative and the No Action sub-alternative is \$390,532 resulting in moderate positive direct economic impacts in the short- and long-term, which would also lead to positive direct social impacts. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

Sub-Alternative A2e would modify both the spatial and temporal extent of the current Charleston Bump closed area. Specifically, this sub-alternative would reduce the spatial extent by moving the northern boundary of the current Charleston Bump closed area southward to 33° 12' 39" N lat. and the shifting the eastern boundary westward to 78° 00' W long. The western boundary would be consistent with the current western boundary of Charleston Bump closed area. The temporal extent of the high-bycatch-risk area would be eight months (from October 1 through May 31) instead of three months (February 1 through April 30). The remainder of the current closed area footprint would only be designated low-bycatch-risk area from February 1 through April 30. Outside those months, that area would be open to normal pelagic longline fishing. NMFS used the

target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. This sub-alternative would generate more revenue from swordfish and yellowfin tuna, but less from bigeye tuna relative to the No Action sub-alternative. When combined, the total revenue difference between this sub-alternative and the No Action sub-alternative is \$83,590 resulting in minor positive direct economic impacts in the short- and long-term, which would also lead to positive direct social impacts. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

#### *East Florida Coast Spatial Management Area*

Sub-Alternative A3a, the no action sub-alternative, would maintain the current East Florida Coast closed area in effect with respect to its spatial and temporal extent. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. The estimated annual revenue for each target species and the combined target species revenue is \$4,196,431 (2021 real dollars). This sub-alternative would maintain the recent fishing effort, catch levels, and revenues, resulting in direct neutral social and economic impacts on pelagic longline fishermen. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Sub-Alternative A3b would modify both the spatial and temporal extent of the current East Florida Coast closed area. Specifically, this sub-alternative consists of two different spatial configurations associated with two temporal periods. From May 1 through November 30 the spatial extent would be the same as the No Action alternative. From December 1 through April 30 the spatial extent would shift the eastern boundary to 40 nm from the coastline within the northern and southern boundaries of the current East

Florida Coast closed area. The remainder of the current closed area footprint would be designated a low-bycatch-risk area from May 1 through November 30. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. This sub-alternative would generate slightly more revenue from swordfish, but less from yellowfin tuna and bigeye tuna relative to the No Action sub-alternative. When combined the total revenue difference between this sub-alternative and the No Action sub-alternative is -\$75,453 resulting in minor negative direct economic impacts in the short- and long-term, which could also lead to negative social impacts. However, fishermen are unlikely to fish in areas with lower catch rates, so reductions in revenue may not be realized. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

Sub-Alternative A3c would modify only the spatial extent of the current East Florida Coast closed area. Specifically, this sub-alternative would reduce the spatial extent by shifting the eastern boundary of the current closed area to 40 nm from the coastline in areas north of the U.S. – Bahamas EEZ boundary at approximately 28°17' 24" N lat. All areas south of that boundary within the current closed area would remain the same relative to the No Action alternative. The temporal extent would remain unchanged relative to the No Action alternative. The remainder of the current closed area footprint would be designated a low-bycatch-risk area for the entire year. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. This sub-alternative would generate more revenue from swordfish, but less from yellowfin and bigeye tuna relative to the No Action sub-alternative. When combined, the total revenue difference between this sub-alternative and the No Action sub-alternative is

\$15,145 resulting in minor positive direct economic impacts in the short- and long-term, which would also lead to positive direct social impacts. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

Sub-Alternative A3d would modify only the spatial extent of the current East Florida Coast closed area. Specifically, this sub-alternative would reduce the spatial extent by including areas east of the line connecting two points at 31° 00' N lat., 79° 32' 46" W long. and 27° 52' 55" N lat., 79° 28' 34" W long. at the northern and southern boundaries, respectively, of the current closed area. All areas south of 27° 52' 55" N lat. within the current closed area would remain the same relative to the No Action alternative. The temporal extent would remain unchanged relative to the No Action alternative. The remainder of the current closed area footprint would be designated a low-bycatch-risk area for the entire year. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. This sub-alternative would generate more revenue from swordfish, but less from yellowfin and bigeye tuna relative to the No Action sub-alternative. When combined, the total revenue difference between this sub-alternative and the No Action sub-alternative is \$37,845 resulting in minor positive direct economic impacts in the short- and long-term, which would also lead to positive direct social impacts. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

Sub-Alternative A3e would modify both the spatial and temporal extent of the current East Florida Coast closed area. Specifically, this sub-alternative consists of two different spatial configurations associated with two temporal periods. From June 1 through September 30 the spatial extent would consist of the area within 40 nm of the

coastline within the northern and southern boundaries of the current East Florida Coast closed area. During this time period, the remainder of the current closed area footprint would be designated a low-bycatch-risk area. From October 1 through May 31 and the spatial extent would include the area east of the Florida coast to a line connecting two points at 31° 00' N lat., 79° 32' 46" W long. and 27° 52' 55" N lat., 79° 28' 34" W long. at the northern and southern boundaries, respectively, of the current closed area. As with the June to September area, from October to May, the remainder of the current closed area footprint would be designated a low-bycatch-risk area. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. This sub-alternative would generate slightly more revenue from swordfish, but less from yellowfin tuna and bigeye tuna relative to the No Action sub-alternative. When combined the total revenue difference between this sub-alternative and the No Action sub-alternative is -\$8,762 resulting in minor negative direct economic impacts in the short- and long-term, which could also lead to negative social impacts. However, fishermen are unlikely to fish in areas with lower catch rates, so reductions in revenue may not be realized. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

#### *DeSoto Canyon Spatial Management Area*

Sub-Alternative A4a, the no action sub-alternative, would maintain the current DeSoto Canyon closed area in effect with respect to its spatial and temporal extent. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. The estimated annual revenue for each target species and the combined target species revenue is \$4,618,912 (2021 real dollars). This

sub-alternative would maintain the recent fishing effort, catch levels, and revenues, resulting in direct neutral social and economic impacts on pelagic longline fishermen. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Sub-Alternative A4b would modify both the spatial and temporal extent of the current DeSoto Canyon closed area. Specifically, the sub-alternative would maintain the current spatial extent of the DeSoto Canyon spatial management area while changing the timing of the closed areas. Both boxes would remain closed from April 1 to October 31 instead of all year. Additionally, from November to March, the top northwest box would be closed while the bottom southeast box would be designated a low-bycatch-risk area. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. This sub-alternative would generate more revenue from swordfish, but less from yellowfin tuna and similar from bigeye tuna relative to the No Action sub-alternative. When combined the total revenue difference between this sub-alternative and the No Action sub-alternative is \$38,188 resulting in minor positive direct economic impacts in the short- and long-term, which would also lead to positive direct social impacts. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

Sub-Alternative A4c would only modify the spatial extent of the current DeSoto Canyon closed area. Specifically, this sub-alternative would reduce the spatial extent by including areas within the current spatial extent that occurs north of 27° 00' N lat. The temporal extent would remain unchanged relative to the No Action alternative. The remainder of the current closed area footprint would be designated a low-bycatch-risk area throughout the year. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-



alternative on commercial pelagic longline revenue. This sub-alternative would generate more revenue from swordfish and yellowfin tuna, but less from bigeye tuna relative to the No Action sub-alternative. When combined, the total revenue difference between this sub-alternative and the No Action sub-alternative is \$278,627 resulting in moderate positive direct and indirect economic impacts in the short- and long-term, which would also lead to positive direct social impacts. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

Sub-Alternative A4d would modify the spatial extent of the current DeSoto Canyon closed area; the temporal extent would remain unchanged (i.e., area would remain closed year-round). Specifically, this sub-alternative would shift the spatial extent putting a parallelogram through the current area. The parallelogram connects southern points; 27° 00' N lat., 86° 30' W long. and 27° 00' N lat., 83° 48' W long., while the northern boundary would be defined by the state water boundary between 88° 24' 58" W long. and 85° 22' 34" W long. The areas outside this parallelogram that are currently closed would reopen to normal fishing. NMFS used the target species catch estimates and ex-vessel prices for swordfish, yellowfin tuna, and bigeye tuna to estimate the effect of the sub-alternative on commercial pelagic longline revenue. This sub-alternative would generate less revenue from all three target species relative to the No Action sub-alternative. When combined, the total revenue difference between this sub-alternative and the No Action sub-alternative is -\$224,295 resulting in moderate negative direct and indirect economic impacts in the short- and long-term, which could also lead to negative social impacts. However, fishermen are unlikely to fish in areas with lower catch rates, so reductions in revenue may not be realized. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

## **Commercial Data Collection**

Alternative B1, the no action alternative, would not implement any new closed area data collection approaches to support HMS spatial management. Because Alternative B1 would not implement any new data collection programs, direct social and economic impacts to fishermen would be neutral in the short-term. In the long-term, as described above, because there would not be any way to collect data from the spatial management areas and modify them accordingly, the impacts to the species, and therefore the impacts to the fishermen and the economy, would be unknown. If the spatial management areas are appropriate and the species and their habitat are protected, fishermen and related industries might experience an increase in revenue as species become more abundant. However, if the spatial management areas are inappropriate and do not protect the species and their habitat, fishermen and related industries might experience a decrease in revenue as the species abundance declines. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Alternative B2 would create a new research fishery, similar to the existing bottom longline shark research fishery, where permitted commercial longline fishing vessels may apply, and a small number would be selected for participation in the spatial management area research fishery. The selected vessels would conduct fishing operations guided by a research plan developed by NMFS, and be subject to conditions. Alternative B2 would be a voluntary program and fishermen would continue to decide whether to fish based on market conditions, fish availability, and the restrictions and conditions of the research fishery. Because of the limited nature of the research fishery, large beneficial social or economic impacts to fishermen are not expected. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Alternative B3 would implement monitoring areas to allow fishermen into previously-closed areas to collect data while following strict effort restrictions and

monitoring and reporting requirements. Under this alternative a specific geographic area would be designated a “monitoring area” and commercial longline vessels would be permitted to fish inside the monitoring area subject to certain conditions and other applicable regulations. In conjunction with Alternative B3, two sub-alternatives are preferred as well: Sub-Alternative B3a (effort caps) and Sub-Alternative B3e (electronic monitoring). Under Sub-Alternative B3a, NMFS would monitor the number of longline sets occurring in the monitoring area, and when the number of sets reaches the effort “cap”, would prohibit fishing with the relevant gear type in the monitoring area as described above. Additionally, vessel operators that intend to fish in a monitoring area would need to 1) declare that intention via VMS before embarking on a trip and 2) would be required to report the catch of the following species, in addition to current bluefin tuna reporting requirements, through VMS within 12 hours after the end of a longline set: blue marlin, white marlin, roundscale spearfish, sailfish, leatherback sea turtles, loggerhead sea turtles, and shortfin mako sharks. Sub-Alternative B3e would require that longline vessels fishing for all, or a part of a trip in a monitoring area have 100 percent of the EM data reviewed for that trip, and paid for by the owner/operator of the vessel.

Fishing effort in the monitoring area(s) would rely on commercial fishermen’s willingness to fish in the area based on market conditions, fish availability, and the restrictions of the monitoring area. Although it is difficult to predict the amount of fishing effort and fish availability that would occur in the monitoring areas, the socio-economic impact is likely to be either neutral or minor and beneficial. Access to previously closed areas would provide the flexibility to fish in locations previously closed to fishing. If access to fishing in monitoring areas decreases the amount of steaming time required to reach the fishing locations, operating costs may be reduced, and a shorter trip duration would facilitate participation in the fishery. Shorter transit times would also result in reduced fuel consumption. Owners of fishing vessels can often have difficulty finding

and hiring crew willing to work on vessels, in part due to the duration of fishing trips, and the impact of fishing trips on crew members' lives. The increased revenue and flexibility associated with monitoring areas would be limited by the restrictions and costs associated with the monitoring areas such as effort caps or the cost of electronic monitoring.

Expanding the use of electronic monitoring to 100-percent video review of all sets that occur within the monitoring area would require owners or operators of fishing vessels to pay for the additional review. Each set would cost approximately \$280 for a full video review, thus, a typical ten day trip consisting of six sets would cost \$1,680. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels would choose to fish in monitoring areas so economic impacts would not be equally shared among all active vessels.

Under Alternative B4, data would be collected from within a spatial management area, which would otherwise be closed, through the issuance of an EFP. This EFP would be issued to fishing vessels participating in specific research. The EFP would exempt participating vessels from certain regulatory requirements for specific research during a limited timeframe. Consideration of an application for gear-specific research in closed areas would require incorporation of elements to ensure research activities do not jeopardize conservation goals or result in excessive gear conflicts with other user groups. Fishermen participating in research under an EFP are likely to be compensated through some combination of commercial target catch sales and research funds. Since the fishermen are likely to operate in areas of unknown target catch rates, researchers may partially or fully fund fishing activities to ensure trips do not have negative profits. As such, fishermen operating under the EFP are unlikely to experience adverse economic impacts nor are they expected to realize larger profits than regular commercial fishing. Thus, Alternative B4 would have neutral social and economic impacts. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

## **Evaluation Timing of Spatial Management Areas**

Under Alternative C1, the no action alternative, NMFS would not commit to a schedule to evaluate the spatial management modifications using data collected under the data programs (“B” Alternatives) analyzed by this DEIS. Evaluations of spatial management areas are administrative in nature and would not have any short-term social and economic impacts on fishermen or indirect impacts on supporting businesses. In the long-term, evaluation of spatial management areas could result in minor beneficial social and economic impacts due to the achievement of a better balance between the ecological and socioeconomic impacts of spatial management areas. This No Action Alternative has no time period for reviews or factors to consider when reviewing areas, and thus has less clarity process-wise than Alternatives C2, C3 and C4. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Under Alternative C2 NMFS would evaluate the four spatial management areas once three years of catch and effort data is finalized and available. Subsequent reviews would occur after three full years of data are available after the conclusion of the previous evaluation. Evaluations of spatial management areas are administrative in nature and would not have any short-term social or economic impacts on fishermen or indirect impacts on supporting businesses. In the long-term, evaluation of spatial management areas could result in minor beneficial social and economic impacts due to the achievement of a better balance among the ecological, social, and economic impacts of spatial management areas. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Under Alternative C3 NMFS would evaluate the four spatial management areas once five years of catch and effort data is finalized and available. Subsequent reviews would occur after five full years of data are available after the conclusion of the previous evaluation. Evaluations of spatial management areas are administrative in nature and

would not have any short-term social or economic impacts on fishermen or indirect impacts on supporting businesses. In the long-term, evaluation of spatial management areas could result in minor beneficial social and economic impacts due to the achievement of a better balance among the ecological, social, and economic impacts of spatial management areas. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Under Alternative C4, NMFS would monitor data collection activities and begin an evaluation if conditions warrant it instead of, or in addition to, scheduled regular evaluation. Evaluations of spatial management areas are administrative in nature and would not have any short-term social or economic impacts on fishermen or indirect impacts on supporting businesses. In the long-term, evaluation of spatial management areas could result in minor beneficial social economic impacts due to the achievement of a better balance among the ecological, social, and economic impacts of spatial management areas. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Under Alternative C5, NMFS would set a default end date for a spatial management area and the area and associated restrictions would be removed unless action is taken to maintain or modify the area. Eliminating spatial management areas after a set number of years would provide additional flexibility for fishermen to fish in areas that were previously closed to fishing, and therefore increase the total amount of area to pursue target species. Further, the newly open area may include locations with potential advantages such as higher catch rates or lower trips costs. Thus, Alternative C5 would likely result in minor beneficial social and economic impacts. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

### **Preferred Alternative Packages**

The D1 Mid-Atlantic Spatial Management Area Preferred Alternative Package would include implementation of four alternatives and sub-alternatives analyzed among the “A,” “B,” and “C” alternatives. Thus, economic impacts to small entities resulting from implementation of the D1 Preferred Alternative Package would be the combination of the impacts of the following alternatives and sub-alternatives described above: Sub-Alternative A1d (spatial and temporal modification to the area), Alternative B1 (no action data collection), Alternative C2 (three year evaluation), and Alternative C4 (triggered evaluation). Impacts of each of the alternatives are not repeated here. In 2020, there were 13 active vessels (vessels that had trips where 75 percent of the landings by weight were sharks) targeting sharks in the Atlantic.

The D2 Charleston Bump Spatial Management Area Preferred Alternative Package would include implementation of four alternatives and sub-alternatives analyzed among the “A,” “B,” and “C” alternatives. Thus, economic impacts to small entities resulting from implementation of the D2 Preferred Alternative Package would be the combination of the impacts of the following alternatives and sub-alternatives described above: Sub-Alternative A2c (spatial and temporal modification to the area), Alternative B3 (monitoring area), Alternative B4 (cooperative research EFP), Alternative C2 (three year evaluation), and Alternative C4 (triggered evaluation). Impacts of each of the alternatives are not repeated here. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

The D3 East Florida Coast Spatial Management Area Preferred Alternative Package would include implementation of four alternatives and sub-alternatives analyzed among the “A,” “B,” and “C” alternatives. Thus, economic impacts to small entities resulting from implementation of the D3 Preferred Alternative Package would be the combination of the impacts of the following alternatives and sub-alternatives described

above: Sub-Alternative A3d (spatial modification to the area), Alternative B3 (monitoring area), Alternative B4 (cooperative research EFP), Alternative C2 (three year evaluation), and Alternative C4 (triggered evaluation). Impacts of each of the alternatives are not repeated here. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

The D4 Preferred DeSoto Canyon Spatial Management Area Preferred Alternative Package would include implementation of four alternatives and sub-alternatives analyzed among the “A,” “B,” and “C” alternatives. Thus, economic impacts to small entities resulting from implementation of the D3 Preferred Alternative Package would be the combination of the impacts of the following alternatives and sub-alternatives described above: Sub-Alternative A4d (spatial modification to the area), Alternative B1 (no action data collection), Alternative B4 (cooperative research EFP), Alternative C2 (three year evaluation), and Alternative C4 (triggered evaluation). Impacts of each of the alternatives are not repeated here. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery, though, not all vessels are active in the area so economic impacts would not be equally shared among all active vessels.

### **Spatial Management Area Regulatory Provisions**

Alternative E1, the no action alternative, would make no changes to the current high-level aspects of design and evaluation regulations at 50 CFR 635.34(d). Consideration of high-level spatial management design elements or factors are administrative in nature and would not have any short-term or long-term social or economic impacts on fishermen. Thus, all social and economic impacts would be neutral. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Alternative E2 would revise the HMS regulations at 50 CFR part 635 to add elements to address the high-level design of specific objectives, timing of evaluation, data



collection and access within spatial management areas. Consideration of high-level spatial management design elements or factors are administrative in nature and would not have any short-term or long-term social or economic impacts on fishermen. Thus, all social and economic impacts would be neutral. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

### **Electronic Monitoring**

Under Alternative F1, NMFS would not transfer sampling costs to the industry and would continue to fund the EM Program (both administrative and sampling costs) and utilize contracts with one or more vendors to conduct EM system installation, maintenance, and repair, as well as data storage, video review, and analyses. Since this alternative would not implement any changes, direct social and economic impacts on pelagic longline fishermen are expected to be neutral. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Alternative F2 would transfer 100 percent of HMS pelagic longline EM sampling costs to the industry, over a three-year period (phased-in) and would include components designed to create a standardized EM program that may be implemented by NOAA certified vendors. In conjunction with the phase-in of sampling costs, this alternative would include four distinct components: 1) vendor requirements; 2) vessel requirements; 3) vessel monitoring plan requirements; and 4) modification of current IBQ Program's EM spatial/temporal requirements. The transfer of EM sampling costs from the Agency to industry would likely lead to a substantial increase in economic costs for vessel owners. The cost to industry is estimated to be approximately \$280 per set before mitigation measures (e.g., multiple vendors, changes to EM spatiotemporal requirements) are factored in. On a median length trip of 10 days with 6 sets, the cost would be \$1,680/trip or \$168/sea-day. This cost estimate equates to approximately 19% of net

revenue on a median trip. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

Alternative F3 would remove all of the current EM program requirements applicable to pelagic longline vessels. Bluefin tuna interactions with pelagic longline gear would be monitored using a combination of VMS data, logbook data, observer reports, and landings data from dealers. Since the Agency funds nearly 100% of the EM program, removing EM requirements would not have a large economic impact on the fishery. However, the fishery would no longer incur costs associated with activities such as shipping hard drives and coordinating equipment repair and replacement. Thus, small economic benefits would be likely. From 2018 through 2020, there were 82 active pelagic longline vessels in the fishery.

#### *Paperwork Reduction Act*

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA). The collection of information requirements in this proposed rule relate to the collection under Control Number 0648-0372, “Electronic Monitoring Systems for Atlantic Highly Migratory Species.” However, due to the existence of concurrent actions for that collection, which will come up for renewal before the final rule for this action is anticipated to be published, the collection-of-information requirements in this proposed rule will be assigned a temporary Control Number that will later be merged into Control Number 0648-0372.

This rule proposes to establish two pelagic longline monitoring areas, in which pelagic longline vessel owners and/or operators that are approved to fish will be required to report interactions with select bycatch species by set via their vessel monitoring system (VMS) units. We estimate no more than 9 pelagic longline vessel operators would be

required to submit a total of 198 bycatch reports each year with no additional recordkeeping and reporting costs, excluding labor costs. These reports would take an estimated 15 minutes to complete for 50 hours of burden per year across the fleet.

Amendment 15 would also bring the HMS Electronic Monitoring (EM) Program in line with National Marine Fisheries Service (NMFS) Procedure 04-1150-02 “*Cost Allocation in Electronic Monitoring Programs for Federally Managed Fisheries*” which outlines guidance and directives for EM cost allocation framework between fishery participants and the Agency. Primarily, the cost allocation policy requires fishery participants to take on responsibility for EM sampling costs, which have previously been covered by the Agency, and Amendment 15 would implement this requirement in the HMS EM Program. To facilitate this, NMFS is proposing a process under which EM vendors could apply to be approved by NMFS based on requirements set forth in the regulations. This process is expected to mitigate economic impacts by encouraging additional EM vendors to enter the market. Vessel owners would contract with NMFS-approved EM vendors for services. The proposed rule would result in new reporting requirements for EM vendors: vendors would be required to assist vessel owners in the development of vessel monitoring plans, and provide quarterly EM video review reports, non-compliance reports, and debriefs to NMFS staff as needed.

As explained above in the “HMS Pelagic Longline Electronic Monitoring Cost Allocation” section, while EM vendor provisions of this proposed rule are new, many requirements of the current EM regulations are not substantively changed by this proposed rule. We estimate 91 pelagic longline vessel operators would be subject to existing and new EM elements of the information collection with 547 total annual burden hours, and an estimated maximum total annual cost to the public of \$932,560 in recordkeeping and reporting costs. Proposed measures to limit the months and regions in which EM reporting is required may substantially reduce reporting costs for vessel

owners depending on how they redistribute their fishing effort. Under the proposed measures, vessel owners would be responsible for the full cost of EM video processing. Currently, pelagic longline vessel operators are required to mail in their EM hard drives after every other trip, which is currently estimated to be 6 times per year, and take 1 hour. We estimate vessel owners would have \$1,692 in recordkeeping and reporting costs each time they submit video data, likely through removable hard drives in the near term.

We also anticipate up to 4 EM vendors will apply to be approved as EM service providers to the pelagic longline fleet, and that no more than 3 vendors will receive approval. EM vendor estimated total annual burden hours would be 718, with \$27,481 estimated total annual recordkeeping and reporting costs. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated time per response varies by item within the suite of information collected, as follows: EM service provider applications, 45 hours; copies of contracts and other documents, 30 minutes; appeals, 4 hours; application revisions, 2 hours; EM certificate of installation, 30 minutes; vessel monitoring plans, 4 hours; quarterly EM review reports, 40 hours; technical assistance, 20 minutes; non-compliance reports, 20 minutes; data storage, 15 minutes; and debriefs of EM staff, 2 hours.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: April 20, 2023.

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Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

**Part 635 – ATLANTIC HIGHLY MIGRATORY SPECIES**

1. This authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. Amend § 635.2 by:

- a. Removing the definition of “Charleston Bump closed area”;
- b. Adding the definition of “Charleston Bump Monitoring Area”;
- c. Removing the definition of “DeSoto Canyon closed area”;
- d. Adding the definition of “DeSoto Canyon Pelagic Longline Restricted Area”;
- e. Removing the definition of “East Florida Coast closed area”;
- f. Adding the definition of “East Florida Coast Monitoring Area”;
- g. Removing the definitions of “Edges 40 Fathom Contour closed area” and

“Madison-Swanson closed area”;

h. Adding the definition of “Mid-Atlantic Bottom Longline Restricted Area”;

i. Removing the definitions of “Mid-Atlantic shark closed area” and

“Northeastern United States Pelagic Longline Monitoring Area”;

j. Adding the definition of “South Atlantic Pelagic Longline Restricted Area”;

k. Removing the definitions of “Spring Gulf of Mexico Pelagic Longline Monitoring Area” and “Steamboat Lumps closed area”; and

l. Adding the definition of “Straight line”.

The additions read as follows:

## **§ 635.2 Definitions.**

\* \* \* \* \*

Charleston Bump Monitoring Area means the area within the Atlantic Ocean bounded by straight lines from 34°00'00" N lat., 76°00'00" W. long.; proceeding due south to 31°00'00" N lat., 76°00'00" W long.; then proceeding due west to 31°00'00" N lat., 79°32'46" W long.; then proceeding northeast to 34°00'00" N lat., 76°00'00" W long.

\* \* \* \* \*

DeSoto Canyon Pelagic Longline Restricted Area means the area within the Gulf of Mexico seaward of the inner boundary of the U.S. EEZ bounded by straight lines from a point intersecting the inner boundary of the U.S. EEZ at 29°30'27" N lat., 85°22'34" W long. near Cape San Blas, Florida; proceeding southeast to 27°00'00" N lat., 83°48'00" W long.; then proceeding due west to 27°00'00" N lat., 86°30'00" W long.; then proceeding northwest to 30°02'53" N lat., 88°24'57" W long.; then proceeding east to a point intersecting the inner boundary of the U.S. EEZ at 30°07'30" N lat., 87°31'07" W long. near Orange Beach, Florida.

\* \* \* \* \*

East Florida Coast Monitoring Area means the area within the Atlantic Ocean bounded by straight lines from 31°00'00" N lat., 79°32'46" W long.; proceeding due east to 31°00'00" N lat., 78°00'00" W long.; then proceeding southwest until the outer boundary of the EEZ is reached at 28°17'10" N lat., 79°11'24" W long.; then following the outer boundary of the EEZ southwest to 27°52'55" N lat., 79°28'35" W long.; then proceeding due north to 31°00'00" N lat., 79°32'46" W long.

\* \* \* \* \*

Mid-Atlantic Bottom Longline Restricted Area means the area within the Atlantic Ocean seaward of the inner boundary of the U.S. EEZ bounded by straight lines from a point intersecting the inner boundary of the U.S. EEZ at 35°41'00" N lat., 75°25'00" W long. just south of Oregon Inlet, North Carolina; proceeding due east to 35°41'00" N lat., 74°48'50" W long.; then proceeding southeast to 35°29'55" N lat., 74°46'04" W long.; then proceeding southwest, roughly following the 191 fathom (350 meter) mark, to 33°50'46" N lat., 76°16'15" W long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 33°50'46" N lat., 77°53'17" W long near Cape Fear, North Carolina.

\* \* \* \* \*

South Atlantic Pelagic Longline Restricted Area means the area within the Atlantic Ocean seaward of the inner boundary of the U.S. EEZ bounded by straight lines from a point intersecting the inner boundary of the U.S. EEZ at 34°00'00" N lat., 77°50'26" W long. near Wilmington Beach, North Carolina; proceeding due east to 34°00'00" N lat., 76°00'00" W long.; then proceeding southwest to 31°00'00" N lat., 79°32'46" W long; then proceeding south until reaching the outer boundary of the EEZ at 27°52'55" N lat., 79°28'35" W long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00'00" N lat., 81°11'15" W long.; then

proceeding due west to 24°00'00" N lat., 81°47'00" W long.; and then proceeding due north to intersect the inner boundary of the U.S. EEZ at 24°29'28" N lat., 81°47'00" W long. near Key West, Florida. long.; and then proceeding due north to intersect the inner boundary of the U.S. EEZ at 81°47'00" W long. near Key West, FL.

\* \* \* \* \*

Straight line means in this part:

(1) For regulated areas, a straight line means a geodesic line with the shortest length connecting two or more points. Straight lines will be displayed as a rhumb line on a map with a Mercator-based projection.

(2) For measuring fish, a straight-line measurement means a measurement between two points of the fish that is not made along the curve of the body.

\* \* \* \* \*

3. Revise § 635.9 to read as follows:

**§ 635.9 Electronic Monitoring.**

(a) Applicability. A vessel permitted or required to be permitted in the Atlantic Tunas Longline category under § 635.4 and that has pelagic longline gear on board is required to have an EM system installed and fully operational before departing on a trip where a vessel will fish with pelagic longline within the boundaries of the relevant EM Data Review Areas and/or Monitoring Areas while they are effective, as specified in paragraphs (a)(1) through (5) of this section. If during a trip pelagic longline sets are deployed both inside and outside of an effective EM Data Review Area and/or Monitoring Area, the EM requirements of this section are in effect for the entire trip and all videos must be submitted to an EM vendor as specified in paragraphs (d) and (e) of this section. This section sets forth EM cost responsibilities; NMFS' application, approval and removal process for EM vendors; requirements for NMFS-approved EM vendors providing services pursuant to contracts to vessels owners; requirements for



vessel owners and/or operators; required EM system components; and other related provisions. Unless otherwise specified, owners and operators of vessels permitted or required to be permitted in the Atlantic Tunas Longline category under 635.4 must comply with this section and are jointly and severally responsible for their vessel's compliance with this section.

(1) The North Atlantic EM Data Review Area. The North Atlantic EM Data Review Area includes all waters north of 35°00'00" N lat., excluding the Mid-Atlantic Bight EM Data Review Area defined in paragraph (a)(2) of this section. This area is effective from June through December of each calendar year.

(2) The Mid-Atlantic Bight EM Data Review Area. The Mid-Atlantic Bight EM Data Review Area is the area seaward of the coastline bounded by straight lines from a point intersecting the coastline at 41°30'00" N lat. 71°01'37" W long.; proceeding due east to 41°30'00" N lat., 69°30'00" W long.; then proceeding due south to 35°00'00" N lat., 69°30'00" W long.; then proceeding due west to the point intersecting the coastline at 35°00'00" N lat., 76°07'34" W long. This area is effective from January through December of each calendar year.

(3) The South Atlantic EM Data Review Area. The South Atlantic EM Data Review Area includes all waters south of 35°00'00" N lat., north of 22°00'00" N lat., and east of 83°00'00" W long. This area is effective from January through June of each calendar year.

(4) The Gulf of Mexico EM Data Review Area. The Gulf of Mexico EM Data Review Area includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c) of this chapter. This area is effective from January through June of each calendar year.

(5) The Monitoring Areas. The Monitoring Areas are defined in § 635.2 and are effective during the months specified for each area as provided in § 635.35(c)(3) and (4).

Vessels fishing with pelagic longline within the boundaries of the Monitoring Areas during the months specified for each area are required to comply with all EM requirements and at all times during the trip.

(b) Cost responsibilities. NMFS is responsible for all administrative costs set forth in paragraph (1) of this section. As of January 1, 2028, the owner of a vessel fishing with pelagic longline gear within the boundaries of the relevant EM Data Review Areas described in paragraphs (a)(1) through (4) of this section and/or a Monitoring Area as described in paragraph (a)(5) of this section is responsible for the EM sampling costs set forth in paragraph (2) of this section. During the three-year period leading up to January 1, 2028, NMFS will transition the responsibility of the sampling costs to the vessel owner as follows. In year one, the vessel owner is responsible for 25 percent of the sampling costs and NMFS is responsible for 75 percent of the sampling costs (and 100 percent of the administrative costs). In year 2, the vessel owner is responsible for 50 percent of the sampling costs and NMFS is responsible for 50 percent of the sampling costs (and 100 percent of the administrative costs). In year 3, the vessel owner is responsible for 75 percent of the sampling costs and NMFS is responsible for 25 percent of the sampling costs (and 100 percent of the administrative costs).

(1) Administrative costs. Administrative costs may include, but are not limited to, program administration support; certification of EM service providers; EM program sample design and performance monitoring; compliance monitoring; data analysis for management and enforcement purposes; and storage of Federal records.

(2) Sampling costs. Sampling costs may include, but are not limited to, equipment purchases, leases, and installation; equipment maintenance and upkeep; training for captain and crew; development and implementation of vessel monitoring plans (VMPs) (see paragraph (d)(2) of this section); data transmittal; video processing, review, and storage; and payment to a NMFS-certified vendor as appropriate for services rendered.

(c) EM vendor approval and evaluation. An entity seeking to provide EM services described in paragraph (d) of this section must submit a complete application to NMFS, at an address designated by NMFS. Once received, NMFS will review the application for completeness and possible approval.

(1) Contents of application. Application forms and instructions for their completion are available from NMFS. An application is complete when all requested forms, information, and documentation have been received, including the information described in this paragraph. NMFS will notify the applicant of any deficiency in the application, including failure to provide information required to be submitted under this part. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned. An application to become an approved EM vendor shall include, but is not limited to, the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) A list of all physical and electronic mailing addresses and any relevant phone or fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location for each office.

(iii) A description of the applicant's ability to carry out the responsibilities and duties of EM vendors under paragraph (d) of this section.

(iii) A statement signed under penalty of perjury by an authorized agent of the applicant EM vendor that each owner, board member, officer, and employee of the EM vendor has no conflict of interest as described in paragraph (c)(3) of this section.

(iv) Procedures for hiring and training of competent program staff to carry out EM field services and data services, including procedures to maintain the skills of EM data processing staff in:

- (A) Use of data processing software;
- (B) Species identification;
- (C) Metadata reporting requirements;
- (D) Data processing procedures;
- (E) Data tracking; and,
- (F) Reporting and data upload procedures.

(2) Application evaluation. NMFS shall review and evaluate each complete application submitted under paragraph (c)(1) of this section. A decision to approve or deny an application shall be made by NMFS within 90 business days of receipt of the complete application by NMFS.

(i) Issuance of approval as an EM vendor shall be based on a determination by NMFS of the applicant's ability to perform the responsibilities and duties under paragraph (d) of this section, as demonstrated in the application information, and the absence of conflict of interest with the fishing industry (see paragraph (c)(3) of this section).

(ii) If NMFS approves the application, the EM vendor's name will be added to the list of approved EM vendors found on the NMFS website and in any outreach information to the industry. An approved vendor shall be notified in writing and provided with any information pertinent to its participation in the EM program.

(iii) If NMFS determines that the applicant is unable to perform the responsibilities and duties under paragraph (d) of this section or has conflicts of interest pursuant to paragraph (c)(3) of this section, NMFS shall deny the application. NMFS shall notify the applicant in writing of the reason for the denial. Within 30 days of the applicant's receipt of the denial notification, an applicant may request reconsideration by

submitting additional information to rectify any deficiencies specified in the written denial. If the applicant does not submit additional information within that 30-day period, they would need to resubmit a new application containing all of the information required under paragraph (c)(1) of this section in order to be reconsidered for being added to the list of approved EM vendors.

(3) Limitations on conflict of interest for EM vendors. Other than providing EM services to vessel owners in the fishery, an approved EM vendor and its employees must not:

(i) Have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, and/or fishery advocacy group;

(ii) Solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or non-performance of the responsibilities and duties of an EM vendor.

(4) Removal from the list of approved vendors. An EM vendor that fails to meet the responsibilities and duties under paragraph (d) of this section or that is shown to have a conflict of interest as described in paragraph (c)(3) of this section, shall be notified by NMFS, in writing, that it is subject to removal from the list of approved EM vendors. Such notification shall specify the reasons for the pending removal. Within 30 days of receiving such notification, an EM vendor may submit written evidence to rebut the reasons for removal from the list. Within 30 days of receiving any rebuttal, NMFS shall notify the EM vendor of its decision. If no rebuttal is received by NMFS within the first 30-day period, the EM vendor shall be automatically removed from the list of approved EM vendors. The decision to remove an EM vendor from the list, either after reviewing a

rebuttal or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved EM vendors does not necessarily prevent an EM vendor from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied.

(d) Responsibilities and duties of EM vendors. To maintain an approved EM vendor status, an EM vendor must demonstrate an ability to provide or support pelagic longline vessel owners and/or operators with the following services:

(1) Vessel Monitoring Plan (VMP). An approved EM vendor must, in consultation with the vessel owner with whom the vendor has a contract, develop required operational plans, also known as VMPs, for EM systems that meet the components and capabilities requirements under paragraph (f) of this section. The VMP is not valid until the EM vendor and the vessel owner have signed and dated the VMP indicating their agreement and NMFS or a NMFS-designated entity has approved the VMP as meeting the management requirements of the EM program by signing and dating the VMP. At a minimum, the VMP must include: information on the locations of EM system components (including any customized camera mounting structure); contact information for technical support; instructions on how to conduct a pre-trip system test; instructions on how to verify proper system functions; location(s) on deck where fish retrieval should occur to remain in view of the cameras; specifications and other relevant information regarding the dimensions and grid line intervals for the standardized reference grid; procedures for how to manage EM system data transmission; catch handling procedures; procedures for periodic checks of the monitor during the retrieval of gear to verify proper functioning; and reporting procedures; and a date(s) specified upon which the requirements, specifications and protocols outlined in the VMP will be fully implemented and functional. The VMP may be updated, supplemented, or revised periodically if such a change determined necessary by either NMFS, the EM vendor, or

the vessel owner. The VMP must be updated if changes to the regulations in this part necessitate changes. Any change, update, supplement, or revision to the VMP must be agreed to by the EM vendor and the vessel owner, and approved by NMFS or a NMFS-designated entity. The VMP should minimize to the extent practicable any impact of the EM systems on the current operating procedures of the vessel, and should help ensure the safety of the crew. The VMP is only valid when there is an existing, signed contract between an approved EM vendor and the vessel owner.

(2) EM installation and maintenance. An approved EM vendor is responsible for ensuring the appropriate EM system, as specified in the VMP, is installed and tested. The EM vendor is also responsible for providing training to vessel owners and operators on how to use the EM system. After confirming that the EM system is properly installed and tested and that the appropriate persons have been trained, the EM vendor will provide a Certificate of Installation to the vessel owner. If the EM system stops working properly, the EM vendor will assist in repairing or replacing the equipment and returning the system to working order. If the EM vendor is notified by the vessel owner or operator that the EM system has stopped functioning properly while the vessel is at sea, the EM vendor will notify NMFS and provide instructions to the vessel owner and/or operator consistent with NMFS' guidance.

(3) Data integrity and storage requirements. An approved EM vendor must receive, access, and store video data consistent with the VMP, and the regulations in this section. Video and metadata must be stored for a minimum of two years after the date received.

(4) Video review requirements. An approved EM vendor must:

(i) Ensure that all video review staff has been trained in species identification consistent with requirements at paragraph (c)(1)(iv) of this section;

(ii) At NMFS' request, conduct additional video review to verify catch reports, and provide information for regulatory, enforcement, or for other management purposes; and,

(iii) On a calendar year quarterly basis, review 10 percent of the sets submitted (randomly selected); at least one set from each pelagic longline vessel that fished in the North Atlantic, Mid-Atlantic Bight, South Atlantic, and Gulf of Mexico EM Data Review Areas, as defined in paragraph (a)(1) through (4) of this section; and 100 percent of the sets submitted from the vessels that fished in the Monitoring Areas, as defined in paragraph (a)(5) of this section. NMFS may evaluate and modify video review rates on a regular basis.

(5) Reporting requirements. Each calendar year, an approved EM vendor must submit quarterly reports to NMFS for vessels for which the EM vendor has existing, signed contracts. Quarter 1 (January through March) report is due on or before June 30. Quarter 2 (April through June) report is due on or before September 30. Quarter 3 report (July through September) is due on or before December 31. Quarter 4 report (October through December) is due on or before March 31. The reports must include a list of vessels that submitted trips or sets for review; a list of vessels that did not submit any trips or sets for review; the location, date, and time of all sets submitted for review; identification of the sets reviewed (vessel name, location, date, and time of sets) for the quarterly report; species caught and amounts (retained and discarded) from the sets reviewed and disposition (dead or alive) of catch that is discarded; information on any technical difficulties (including poor video, no video, unreviewable video, misaligned camera angles, and any other issues that prevent effective video review of catch); information on how technical difficulties were addressed on the vessel and during the video review process; and/or any questions video reviewers may have about whether the vessel's fishing practices are compliant with applicable regulations. The metadata from



all submitted trips and sets must accompany these quarterly reports. As appropriate, NMFS may respond to the questions about fishing practices or possible regulatory violations in order to assist video reviewers and EM vendors in understanding the regulations and the EM program.

(e) Vessel owner and operator requirements. The owner of a vessel with pelagic longline gear on board and fishing with pelagic longline gear in an effective EM Data Review Area and/or Monitoring Area, as described in paragraph (a) of this section, must obtain EM services as described in paragraph (d) of this section from a NMFS-approved EM vendor (see paragraph (c)). For such a trip, the vessel owner and/or operator must:

(1) Declare intent to fish with pelagic longline in an EM Data Review Area or Monitoring Area through hail-out via VMS unit prior to departing on the trip as described in 635.69;

(2) Have EM system components on board as required under paragraph (f) of this section;

(3) Activate the EM system prior to departing on the trip;

(4) Collect video data during hauling activities and sensor data during the duration of the trip via an installed and working EM system;

(5) Have on board and available for inspection an approved VMP pursuant to paragraph (d)(1) of this section;

(6) Ensure that all of the requirements, specifications and protocols outlined in the VMP have been implemented by the date specified in the VMP;

(7) Have on board and available for inspection a Certificate of Installation in accordance with paragraph (d)(2) of this section;

(8) Prior to departing on the trip, ensure the installed EM system has the capacity needed to enable data collection and video recording for the entire trip;

(9) Prior to departing on the trip, test the functionality of the system and contact an approved EM vendor if the system is not functioning properly. If the system is not functioning properly, the vessel is prohibited from deploying pelagic longline sets in any effective EM Data Review Area and/or Monitoring Area as defined in paragraph (a) of this section. The vessel owner and operator must work with the EM vendor pursuant to paragraph (d)(2) of this section to correct this issue;

(10) During the trip, ensure the proper continuous functioning of all aspects of the EM system as required under paragraph (f) of this section, including that: the EM system must remain powered on for the duration of each fishing trip consistent with paragraph (a) of this section; cameras must be functioning and cleaned routinely; the hydraulic and gear sensors must be operational; the global positioning system (GPS) signal must be functioning; and the EM system components must not be tampered with;

(11) If the EM system stops functioning properly at sea, contact the EM vendor and follow the instructions given. Such instructions may include but are not limited to returning to port until the EM system is repaired. Once in port, an EM system must be functioning properly (*e.g.*, repaired, reinstalled, or replaced) before the vessel may fish with pelagic longline within an effective EM Data Review area

(12) Ensure that all fish that are caught, even those that are released, are handled in a manner that enables the video system to record such fish, and ensure that interactions occur in accordance with relevant regulations and the operational procedures outlined in the VMP;

(13) Ensure that each retained fish is placed on the standardized reference grid (see paragraph (f)(7) of this section) in view of cameras in accordance with the operational procedures outlined in the VMP;

(14) At the completion of a trip, submit all electronic data, including video, sensor, and metadata, to a prearranged, approved EM vendor, consistent with the agreed upon requirements in the VMP; and,

(15) Monitor and maintain the EM system in working condition and ensure the proper continuous functioning of the EM system as required under paragraph (f) of this section. The vessel owner and operator must work with the EM vendor to ensure the EM system is maintained and working properly (see paragraph (d)(2) of this section).

(f) EM System Components. The EM system installed must be comprised of video camera(s), recording equipment, and other related equipment, and must have the following components and capabilities:

(1) Video camera(s).

(i) Video cameras must be mounted and placed to provide clear, unobstructed views of the area(s) where the pelagic longline gear is retrieved and of catch being removed from hooks prior to being placed in the hold or discarded. There must be lighting sufficient to clearly illuminate individual fish.

(ii) Video camera(s) must be in sufficient numbers (a minimum of two), with sufficient resolution (no less than 720p (1280 × 720)) for the NMFS-approved vendor, NMFS, the USCG, and their authorized officers and designees to determine the number and species of fish harvested. To obtain the views required in paragraph (f)(1)(i) of this section, at least one camera must be mounted to record close-up images of fish being retained on the deck at the haulback station, and at least one camera must be mounted to provide views of the area from the rail to the water surface, where the gear and fish are hauled out of the water. The NMFS-approved vendor will determine the number and placement of cameras needed to achieve the required views, based on the operation and physical layout of the vessel.

(iii) The EM system must be capable of initiating video recording at the time gear retrieval starts. It must record all periods of time from when the gear is being retrieved and catch is removed from the hooks until it is placed in the hold or discarded.

(2) GPS receiver. A GPS receiver is required to produce output, which includes location coordinates, velocity, and heading data, and is directly logged continuously by the control box. The GPS receiver must be installed and remain in a location where it receives a strong signal continuously.

(3) Hydraulic and drum rotation sensors. Hydraulic sensors are required to continuously monitor the hydraulic pressure and a drum rotation sensor must continuously monitor drum rotations.

(4) EM control box. The system must include a control box that receives and stores the raw data provided by the sensors and cameras and must be adequate for the entire length of the trip.

(5) EM systems monitor. A wheelhouse monitor must provide a graphical user interface for the harvester to monitor the state and performance of the control box and provide information on the current date and time synchronized via GPS, GPS coordinates, current hydraulic pressure reading, presence of a data disk, percentage used of the data disk, and video recording status.

(6) EM software. The EM system must have software that enables the system to be tested for functionality and that records the outcome of the tests.

(7) Standardized reference grid. The vessel must have a standardized grid on deck in view of the haulback station camera(s) in such a way that the video recording includes an image of each fish on the grid in order to provide a size reference. The standardized grid may be on a removable mat or carpet that is placed on the deck before the fish are brought on board, or may be painted directly on the deck. The standardized reference grid must have accurate dimensions and grid line intervals as instructed and specified in the

vessel's VMP by the NMFS-approved EM vendor. The vessel owner and operator are responsible for ensuring compliance with the provided instructions and specifications and for ensuring accurate, straight, clear and complete grid lines with no missing, incomplete, blurry or smudged lines.

(g) Data maintenance, storage, and viewing. The EM system must have the capacity to allow the vessel owner and operator, the approved EM vendor, NMFS and their authorized officers and designees, and consistent with 16 U.S.C. 1881a(b)(1) (confidentiality of information), the USCG and their authorized officers and designees and state law enforcement officers, to observe the live video on the EM systems monitor (see paragraph (f)(5) of this section). The vessel owner and operator must provide access to the system, including the data, upon request. The EM vendor must provide access to stored data upon request by NMFS, its agents, or authorized officers.

(h) Handling NMFS-owned EM systems and components. Vessel owner and operators may continue to use NMFS equipment currently installed as long as it functions properly as required under these regulations. Any replacement or repair of equipment or system components is the financial responsibility of the vessel owner pursuant to the contract with an EM vendor. Equipment or components that are no longer operational or useful must be surrendered or disposed of consistent with Federal property laws and requirements.

4. Amend § 635.21 by:

- a. Removing paragraph (a)(3);
- b. Redesignating paragraph (a)(4) as (a)(3);
- c. Removing paragraph (b)(2);
- d. Redesignating paragraphs (b)(3) and (4) as (b)(2) and (3);
- e. Revising paragraphs (c)(1)(i) and (c)(2);
- f. Removing paragraph (c)(3);

- g. Redesignating paragraphs (c)(4) through (6) as paragraphs (c)(3) through (5);
- h. Removing paragraph (d)(1);
- i. Redesignating paragraphs (d)(2) through (5) as (d)(1) through (4); and
- j. Revising newly redesignated paragraph (d)(2).

The revisions read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Has bottom longline gear on board and is in a Restricted Area or gear restricted area designated under § 635.35(c)(1) and (2) or is in a monitoring area designated under § 635.35(c)(3) and (4) that has been closed, the vessel may not, at any time, possess or land any pelagic species listed in Table 2 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

\* \* \* \* \*

(2) If pelagic longline gear is on board a vessel issued or required to be issued a LAP under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the NED at any time unless, the vessel complies with paragraphs (i) through (iii) and also paragraph (5) of this section:

(i) The vessel is limited to possessing on board and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. The outer diameter of the circle hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye on the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis), and the distance between the circle hook point and the shank (*i.e.*, the gap) must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the

barbed end of the hook and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. If green-stick gear, as defined at § 635.2, is on board, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook; and,

(ii) The vessel is limited, at all times, to possessing on board and/or using only whole Atlantic mackerel and/or squid bait, except that artificial bait may be possessed and used only with green-stick gear, as defined at § 635.2, if green-stick gear is on board; and,

(iii) Vessels must possess, inside the wheelhouse, a document provided by NMFS entitled, “Careful Release Protocols for Sea Turtle Release with Minimal Injury,” and must post, inside the wheelhouse, sea turtle handling and release guidelines provided by NMFS.

\* \* \* \* \*

(d) \* \* \*

(2) If a vessel issued or required to be issued a permit under this part is in a Restricted Area or closed area designated under § 635.35(d)(1) and has pelagic longline gear on board, the vessel may not, at any time, possess or land any demersal species listed in Table 3 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

\* \* \* \* \*

5. In § 635.24, revise the introductory text to read as follows:

**§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.**

The retention limits in this section are subject to the quotas and closure provisions in §§ 635.27 and 635.28, and the gear operation and deployment restrictions in §§ 635.21 and 635.35.

\* \* \* \* \*

6. In § 635.32, revise paragraph (c)(1) and adding paragraphs (c)(2) and (h)(6) to read as follows:

**§ 635.32 Specifically authorized activities.**

\* \* \* \* \*

(c) \* \* \*

(1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue EFPs.

(2) NMFS may issue EFPs to conduct research and collect information specifically regarding the spatial management areas described in § 635.35. In addition to all of the information required under § 600.745(b)(2) of this chapter, an application for an EFP to conduct research and collect information regarding the spatial management areas should include the objective of the research; a description of the how the researchers intend to verify that the catch and all of the terms and conditions of the EFP are being met (e.g., via a working EM system, authorized researchers, NMFS-approved observers); and a description of how the research is being conducted. As with other EFPs, any EFP provides authorization only for the time and area, retention limits, and gear specified in the permit, and based upon the terms and conditions set forth in the permit and as acknowledged and agreed to by the permit holder under § 600.745(b)(4) of this chapter. The terms and conditions for a spatial management area EFP may require reporting more frequently than is described in paragraph (h)(1) of this section.

\* \* \* \* \*



(h) \* \* \*

(6) EFPs, scientific research permits, display permits, chartering permits, and shark research permits may be revoked, suspended, or modified at any time, do not confer any right to engage in activities beyond those authorized by the permit, and do not confer any right of compensation to the holder.

\* \* \* \* \*

7. In § 635.34, revise paragraphs (a), (b), and (d) to read as follows:

**§ 635.34 Adjustment of management measures.**

(a) NMFS may adjust the IBQ shares or resultant allocations for bluefin tuna, as specified in § 635.15; catch limits for bluefin tuna, as specified in § 635.23; the overall, regional, and/or sub-regional quotas for bluefin tuna, sharks, swordfish, and northern albacore tuna as specified in § 635.27; the retention limits for sharks, as specified at § 635.24; the regional retention limits for Swordfish General Commercial permit holders, as specified at § 635.24; the marlin landing limit, as specified in § 635.27(d); the minimum sizes for Atlantic blue marlin, white marlin, and roundscale spearfish as specified in § 635.20, the EM Data Review Area definitions as specified in § 635.9(a); and the annual effort cap thresholds in the monitoring areas as specified in § 635.35(c)(3) and (4).

(b) In accordance with the framework procedures in the 2006 Consolidated HMS FMP, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: Maximum sustainable yield or optimum yield based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions, or regional and/or sub-regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark

species groups; permitting and reporting requirements; workshop requirements; the IBQ shares or resultant allocations for bluefin tuna; administration of the IBQ program (including but not limited to requirements pertaining to leasing of IBQ allocations, regional or minimum IBQ share requirements, IBQ share caps (individual or by category), permanent sale of shares, NED IBQ rules, *etc.*); *de minimis* bluefin tuna quota set-aside for new entrants and associated requirements, process and conditions; spatial management restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; observer coverage requirements; EM requirements and administration of the EM program; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

\* \* \* \* \*

(d) Consistent with the Magnuson-Stevens Act, the FMP, and other applicable law, when considering a framework adjustment to add, change, or modify the spatial management restrictions, NMFS will consider, but is not limited to, the following: any Endangered Species Act related issues, concerns, or requirements, including applicable BiOps; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings, bycatch, and fishing effort data; evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; social and economic impacts; and the practicability of implementing new or modified closures compared to other bycatch reduction options. If the species is an ICCAT managed species, NMFS will also consider the overall effect of the U.S.' catch on that species. Additionally, NMFS may also consider the factors listed at § 635.35(e).

8. Add § 635.35 to Subpart C to read as follows:

**§ 635.35 Spatial management area restrictions.**

(a) General Restrictions. If a vessel issued or required to be issued a LAP under this part has pelagic or bottom longline gear on board and is in a closed area (see paragraph (d) of this section), gear restricted area (see paragraphs (b) and (c) of this section), or a monitoring area (see paragraphs (b) and (c) of this section) that has been closed, it is a rebuttable presumption that any fish on board such a vessel were taken with pelagic or bottom longline gear in the area except where such possession is aboard a vessel transiting such an area with all fishing gear stowed appropriately. Longline gear is stowed appropriately if all gangions and hooks are disconnected from the mainline and are stowed on or below deck, hooks are not baited, and all buoys and weights are disconnected from the mainline and drum (buoys may remain on deck). Coordinates for gear restricted areas and monitoring areas are set forth in the definitions under § 635.2.

(b) Bottom Longline restrictions. If bottom longline gear is on board a vessel issued or required to be issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the Mid-Atlantic Bottom Longline Restricted Area from November 1 through May 31 each calendar year, unless persons on board the vessel are authorized to conduct research under a shark research fishery permit as specified at § 635.32.

(c) Pelagic longline restrictions. If pelagic longline gear is on board a vessel issued or required to be issued a permit under this part:

(1) In the South Atlantic Pelagic Longline Restricted Area and the DeSoto Canyon Restricted Area, persons aboard that vessel may not fish or deploy any type of fishing gear at any time, unless persons aboard the vessel are authorized to conduct research under an EFP as specified at § 635.32.

(2) In the NED, persons aboard that vessel may not fish or deploy any type of fishing gear at any time unless they comply with the requirements under § 635.21(c)(2) and (5).

(3) In the Charleston Bump Monitoring Area from February 1 through April 30, persons aboard that vessel may deploy fishing gear until the annual effort cap of 69 pelagic longline sets has been reached or is projected to be reached. When the effort cap is reached, or is projected to be reached, NMFS will file for publication with the Office of the Federal Register a closure for the Monitoring Area, which will be effective no fewer than five days from date of filing. From the effective date and time of the closure until May 1, vessels issued or required to be issued a LAP under this part and that have pelagic longline gear on board are prohibited from deploying pelagic longline gear within the boundaries of the Charleston Bump Monitoring Area. Vessels fishing within the Charleston Bump Monitoring Area from February 1 through April 30 are required to comply with all EM requirements in § 635.9 and VMS requirements in § 635.69. From May 1 through January 31, vessels issued or required to be issued a LAP under this part and that have pelagic longline gear on board are authorized to deploy pelagic longline gear within the boundaries of the Charleston Bump Monitoring Area. NMFS may file for publication with the Office of the Federal Register a closure of the monitoring area before the effort cap is reached and/or an action to not reopen the monitoring area on February 1, if warranted by conservation and management concerns raised by unexpectedly high bycatch, high fishing effort, fishing effort that is overly clustered temporally or spatially, or other relevant considerations.

(4) In the East Florida Coast Monitoring Area, year-round, persons aboard that vessel may deploy fishing gear until the annual effort cap of 124 pelagic longline sets has been reached or is projected to be reached. When the effort cap is reached, or is projected to be reached, NMFS will file for publication with the Office of the Federal Register a closure for the Monitoring Area, which will be effective no fewer than five days from date of filing. From the effective date and time of the closure forward, vessels issued or required to be issued a LAP under this part and that have pelagic longline gear on board

are prohibited from deploying pelagic longline gear within the boundaries of the East Florida Coast Monitoring Area until January 1 of the following year. Vessels fishing within the East Florida Coast Monitoring Area at any time are required to comply with all EM requirements in § 635.9 and VMS requirements in § 635.69. NMFS may file for publication with the Office of the Federal Register a closure of the monitoring area before the effort cap is reached and/or an action to not reopen the monitoring area on January 1, if warranted by conservation and management concerns raised by unexpectedly high bycatch, high fishing effort, fishing effort that is overly clustered temporally or spatially, or other relevant considerations.

(d) Other area restrictions applicable to HMS permitted vessels.

(1) In addition to the area restrictions listed above, vessels that have been issued or are required to be issued a permit under this part, may not fish for, catch, possess, or retain any Atlantic HMS in the following spatial management times and areas:

(i) As specified at § 622.34(a)(1)(iii) and (3) of this chapter, within the Edges from January through April of each year.

(ii) As specified at § 622.34(a)(1)(i) and (ii) of this chapter, within the Madison and Swanson and the Steamboat Lumps sites:

(A) From November through April of each year, no vessel issued or required to be issued a permit under this part may fish or deploy any type of fishing gear.

(B) From May through October of each year, no vessel issued or required to be issued a permit under this part may fish or deploy any type of fishing gear except for surface trolling. For the purposes of this section, surface trolling is defined as fishing with lines trailing behind a vessel that is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(iii) Within the areas of the Gulf coral Habitat Areas of Particular Concern (HAPCs), as specified in § 622.74 of this chapter, no person may bottom anchor a fishing vessel or deploy unauthorized fishing gear. For purposes of this provision, fishing gear is deployed if any part of the gear is in contact with the water.

(2) If bottom longline gear is on board a vessel issued or required to be issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the following areas:

(i) In the Caribbean, the areas designated at §§ 622.439(a)(1) through (2), 622.479(a)(1) through (2), and 622.514(a)(1) of this chapter, year-round; and

(ii) In the South Atlantic, the areas designated at § 622.183(a)(1)(i)(A) through (H) of this chapter, year-round.

(e) Review of spatial management measures. NMFS will regularly review HMS spatial management areas (not NMFS regional areas under paragraph (d) of this section) to determine if adjustments are needed to add, change, or modify an area or any applicable requirements for an area. After reviewing an area, NMFS may consider changes or modifications to the area or its management measures, as appropriate, through framework adjustments as specified at § 635.34. When reviewing a spatial management area, NMFS may consider, but is not limited to consideration of, the following relevant factors:

(i) Fishery metrics such as landings, discards, catch rates, and effort.

(ii) The usefulness of information from catches for biological sampling and monitoring status of target and non-target species.

(iii) Fishery social and economic data regarding fishing vessels and shoreside business, including revenue, costs, and profitability.

(iv) Effects of catch rates on target and non-target species in other regions or on fishing opportunities in other regions or fisheries.

(vii) Fishing practices, including tactics, strategy, and gear.

(viii) Biological, ecological, and life history data and research on primary bycatch and target species.

(ix) Variations in seasonal distribution, abundance, or migration patterns of the relevant species.

(x) Resilience to climate change impacts, including changes in species distribution, fishing effort location, and vulnerable fishing communities.

(xi) Oceanographic data and research including sea surface temperature, chlorophyll a concentrations and bathymetry.

(xii) Variations in oceanographic features such as currents, fronts, and sea surface temperature.

(xiii) Other design and technical considerations such as ecosystem modeling parameters (*e.g.*, ocean currents, bottom topography), safety, enforceability (*e.g.*, regular shapes), gear conflicts, timing of evaluation, access to the area for data collection, conservation and management objectives, environmental justice, state or other jurisdictional boundaries, efficiency in the size of area (given the highly variable and mobile nature of the HMS fisheries), and non-fishery activity (*e.g.*, transportation, energy production).

(xiv) Other considerations as may be applicable to the specific management goals of any particular spatial management area.

9. Amend § 635.69 by:

a. Revising paragraphs (a)(2) and (e)(2);

b. Redesignating paragraph (e)(5) as paragraph (e)(6); and

c. Adding new paragraph (e)(5).

The revision and addition read as follows:

**§ 635.69 Vessel monitoring systems.**

(a) \* \* \*

(2) Whenever a vessel issued a directed shark LAP has bottom longline gear on board, is located between 33°00' N. lat. and 36°30' N. lat., and the Mid-Atlantic Bottom Longline Restricted Area is closed as specified in §635.35(b); or

\* \* \* \* \*

(e) \* \* \*

(2) Hailing out. Prior to departure for each trip, a vessel owner and/or operator must submit a pre-trip hail out to NMFS declaring any highly migratory species the vessel will target on that trip and the specific type(s) of fishing gear that will be on board the vessel, using NMFS-defined gear codes. If the vessel owner and/or operator participates in multiple HMS fisheries, or possesses multiple fishing gears on board the vessel, the vessel owner and/or operator must submit multiple electronic reports to NMFS. If, during the trip, the vessel switches to a gear type or species group not reported on the initial declaration, another in-trip hail out declaration must be submitted before fishing begins. This information must be reported to NMFS using an attached VMS terminal or using another method as instructed by NMFS. Additional hailing out declarations for EM Data Review Areas and Monitoring Areas are as follows:

(i) If a vessel owner or operator intends to deploy pelagic longline sets in the Charleston Bump or East Florida Coast Monitoring Areas (§§ 635.35(c)(3), (4) and 635.2), such intent must be declared in the pre-trip or in-trip hail-out. Vessel owners and operators shall not deploy pelagic longline sets in these Monitoring Areas until such declaration is submitted in the pre-trip or in-trip hail-out.

(ii) If a vessel owner or operator intends to deploy pelagic longline sets in an EM Data Review Area (§ 635.9(a)(1) through (4)), such intent must be declared in the pre-trip or in-trip hail-out. Vessel owners and operators shall not deploy pelagic longline sets in



an EM Data Review Area until such declaration is submitted in the pre-trip or in-trip haul-out.

\* \* \* \* \*

(5) The vessel owner and/or operator of a vessel fishing with pelagic longline gear within the boundaries of the Monitoring Areas (§§ 635.35(c)(3) and (4) and 635.2) must report to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS as follows: For each set, as instructed by NMFS, the date and area of the set, the number of hooks and the actual length of the following species that are retained and approximate length of these species that are discarded dead or alive must be reported within 12 hours of the completion of each pelagic longline haul-back: bluefin tuna, blue marlin, white marlin, roundscale spearfish, sailfish, leatherback sea turtles, loggerhead sea turtles, and shortfin mako sharks.

\* \* \* \* \*

10. Amend § 635.71 by:

- a. Revising paragraphs (a)(30), (31), (39), (57), and (58);
- b. Adding paragraphs (a)(63) through (67);
- c. Removing paragraph (b)(46); and
- d. Redesignating paragraphs (b)(47) through (59) as (b)(46) through (58).

The revisions and additions read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(30) Deploy or fish with any fishing gear from a vessel, or anchor a fishing vessel, permitted or required to be permitted under this part, in any spatial management area contrary to the requirements specified and defined at § 635.35.

(31) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board in any spatial management areas during the time periods specified at § 635.35(c).

\*\*\*\*\*

(39) Deploy or fish with any fishing gear from a vessel with a bottom longline on board, in any spatial management area during the time periods specified at § 635.35(d).

\*\*\*\*\*

(57) Fail to appropriately stow longline gear when transiting a spatial management area that has been closed, as specified in § 635.35(a).

(58) Deploy or fish with any fishing gear from a vessel with a pelagic longline gear on board in a Monitoring Area that has been closed as specified in § 635.35(c)(3) through (5).

(63) Fail to comply with the EM vendor responsibilities as specified in § 635.9.

(64) Fail to comply with the vessel owner and/or operator operational requirements as specified in § 635.9.

(65) Fail to comply with the EM requirements when fishing with pelagic longline gear within the EM Data Review Areas as specified at §635.9(a)(1) through (4) and the spatial management areas as specified at § 635.34(c)(3) and (4).

(66) Fail to report the catch of species through VMS as required when fishing with pelagic longline gear within spatial management areas as specified at § 635.69(e)(5).

(67) Fish with pelagic longline gear in the EM Data Review Areas as specified at § 635.9(a)(1) through (4) and the spatial management areas as specified at § 635.34(c)(3) and (4) without submitting a hail out declaration through VMS as specified at § 635.69(e)(2).

\* \* \* \* \*

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